Case and Comment
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The Constitutionality of Workmen's Compensation and Compulsory Insurance Laws

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IN THE opinion of the Court of Appeals of New York in Jensen v. Southern P. Co., decided July 13th of this year, and reported, when this is written, only in the New York Law Journal (vol. 53, No. 100) of July 28th, 1915, the following distinctions are made between the Wainwright workmen's compensation act, which the same court declared violative of the "due process" provision of both the state and the Federal Constitutions in Ives v. South Buffalo R. Co. 201 N. Y. 271, 94 N. E. 431, Ann. Cas. 1912B, 156, 1 N. C. C. A. 517, 34 L.R.A.(N.S.) 162, and the workmen's compensation law adopted in 1914, which in the case at bar is held not to violate the "due process" clause of the Federal Constitution,—the State Constitution having been amended meanwhile so that presumably either law would not violate its provisions:

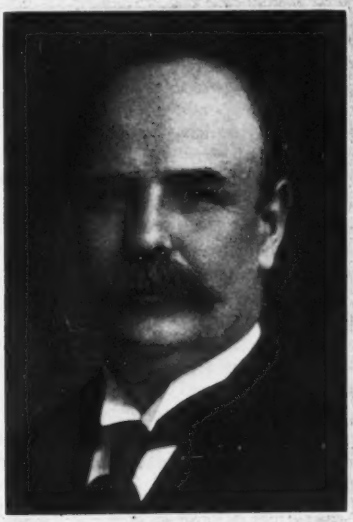
"However, it is urged that the reasons which constrained the court to declare the act involved in the Ives Case unconstitutional are equally cogent when applied to the 14th Amendment. *In the first place it is to be observed that the two acts are essentially and fundamentally different. That involved in the Ives Case made the employer liable in a suit for damages, though without even imputable fault and regardless of the fault of the injured employee short of serious and wilful misconduct.* This act protects both employer and employee, the former from wasteful suits and extravagant verdicts, the latter from the expense, uncertainties, and delays of litigation in all cases, and from the certainty of defeat if unable to establish a case of actionable negligence. *Both acts are said to have been based on the proposition that the risk of accidental injuries in a hazardous employment should be borne by the business,* and that loss should not fall on the injured employees and his dependents, who are unable to bear it or to protect themselves against it. *That act made no attempt to dis-*

tribute the burden, but subjected the employer to a suit for damages. This act does in fact as well as in theory distribute the burden equitably over the industries affected. It allows compensation only for loss of earning power, but by the creation of a state insurance fund, or by the substitute methods provided, it insures the prompt receipt by the injured employee or his dependents of a certain sum undiminished by the expenses of litigation. *The two acts are therefore so plainly dissimilar that the decision in the Ives Case is not controlling in this.*

"*Moreover, upon the question whether an act offends against the Constitution of the United States the decisions of the United States Supreme Court are controlling.* The only one of the numerous workmen's compensation acts which appears to have been directly passed on by the United States Supreme Court is the act of Ohio, which contained an optional clause. Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 59 L. ed. —, 35 Sup. Ct. Rep. 167, 7 N. C. C. A. 510. The single question decided in that case was that limiting the application of the act to shops with five or more employees did not result in arbitrary and unreasonable classification. This act is compulsory. The employer is subjected to a penalty for not adopting one of the three methods of insurance allowed him, and the employee has no choice at all, except possibly as to whether he will enter one of the classified employments. *However, except for a feature presently to be considered, the decision in Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487, 32 L.R.A.(N.S.) 1062, is decisive. Indeed, upon close analysis it will appear that the taking justified in that case as a proper exercise of the police power was no more in the public interest than that involved in this case, and that the mutual benefits to the parties immediately concerned were not as direct.* In that case an act of the state of Oklahoma which requires every bank existing under the state laws to pay an assessment, based on average daily deposits, into a guaranty fund to secure the full repayment of deposits in case any such bank became insolvent was sustained, not merely under the reserve power of the state to alter or repeal charters, but as a proper exercise of the police power. Solvent banks were thus required to pay money into a fund for the direct benefit of others, the banks benefiting only indirectly from the supposed benefit to commerce and the greater stability of banking. *In this case the mutual benefits are direct. Granted that employers are compelled to insure, and that there is in that sense a taking. They insure themselves and their employees from loss, not others.* The payment of the required premiums exempts them from further liability. The theoretical taking no doubt disappears in practical experience. As a matter of fact, every industrial concern, except the very large ones who insure themselves, have for some time been forced by conditions, not by law, to carry accident indemnity insurance. A relatively small part of the sums thus paid actually reached injured workmen or their dependents. With the economic saving of the present scheme, insurance in the long run should certainly be as cheap as under the old wasteful plan, and the families of all injured workmen, not a part only, will receive some compensation for the loss of earning power of the wage earner. We should consider practical experience as well as theory, in deciding whether a given plan in fact constitutes a taking of property in violation of the Constitution. *A compulsory scheme of insurance to secure injured workmen in hazardous employments and their dependents from becoming objects of charity certainly promotes the public welfare as directly as does an insurance of bank deposits from loss.*

"But for the matter now to be considered, we need not look farther for a case controlling upon us and in principle decisive of this. *Whilst the Noble State Bank Case was referred to in the Ives Case, it was not controlling for the reason that the state Constitution was involved, and it was not in point as an authority because of the essential differences in the act then before the court, already pointed out.*"

When the Ives decision was handed down, there was a great outcry because it seemed to some that it was a great obstacle in the way of the realization of the proposal to abandon employers' liability, based upon negligence only, for workmen's compensation. But that it was unsound, few qualified lawyers could be found with the temerity to affirm,—at least, with such confidence that they recommended the adoption in other states of laws similar in principle to the Wainwright act. Instead, most of them, desiring to introduce a law which would hold the employer directly liable, urged the enactment of so-called "elective" laws, as in New Jersey; of these, in one form or another, twenty have been passed in as many states. And only in a few states, such as Washington, Montana, and West Virginia, which essayed compulsory insurance, had the champions of the change sufficient confidence in their convictions to proceed as if the Ives decision either were not right or did not apply. Evidently in all the other states they expected their courts to hold the Ives decision sound and applicable if they dared to pass a workmen's compensation law holding the employer directly liable; and even in the three states mentioned, they may have had the same view, for they also did not enact laws of that character.



MILES M. DAWSON

"Due process" deprives a man of property in four ways, only:

1. By enforcing his own voluntary agreement.

2. By requiring him to indemnify another for an injury due to his act or negligence.

3. For a public purpose, by taxation.

4. For a public purpose upon remuneration for the same.

The Wainwright act neither took the property of the employer "by taxation" nor "upon remuneration," though it was for a public purpose; yet it undertook to deprive him of his property by creating for him by law a liability which he had neither contracted to assume nor incurred by his tortious act or negligence. It was, therefore, clearly in violation of the "due process" provisions of both the Federal and the State Constitutions. The workmen's compensation law which has now been held not to violate the "due process" provision of the Federal Constitution does not impose upon the employer the liability to pay to an employee or his dependents any sum of money whatsoever, but requires (§ 10) that he shall secure to all his employees the payment of compensation by "insuring and keeping insured the payment of compensation in the state fund." (§ 50.)

The employer can become personally liable by securing under the provisions of § 50, the permission of the Commission to carry his own risk,—*i. e.*, by his voluntary assumption of liability,—or by his incurring a penalty for failure to comply with the law (§§ 11 and 52),—*i. e.*, by his unlawful act, by reason of which his employees and their dependents would otherwise suffer.

The difference between this and imposing a direct liability upon him is vital

to the issue, which fact warrants special consideration of the true character of a law which falls within the decision of the court of appeals, just handed down.

The theory of workmen's compensation is not one of individual liability growing out of contract or of a tortious act or omission. It is that, in the interest of the state and its citizens, the portion of the cost of furnishing products and services which is represented by the loss of time through disabilities caused by accident arising out of the occupation, and by deaths from such accidents of persons engaged in the occupation, should be borne, in the first instance, by all the employers who furnish such products and services, in such manner that, and to the end that, it will be added to the prices of the products or services, and be paid by the ultimate consumers. The purpose is social justice, with the enormous advantages that thereby workmen and their dependents are not pauperized by the consequences of these accidents, and that these products and services are not supplied at a lower price on the fictitious basis that such embrace all the costs, while in point of fact the remainder of the costs are thrown upon the most helpless of our people in the first instance, and then upon the general community in the expense of litigation concerning these accidents, in the expense of the care of pauperized victims of the accidents, and in the indefinable but none the less real and serious damages to the state growing out of such distress and pauperism.

By the amendment of the Constitution of the state of New York, and by the subsequent action of the legislature in enacting the workmen's compensation law, this has been solemnly declared by the People of the State of New York, in the most effective manner, *to be a public purpose,* so important that constitutional restrictions applying to all other forms of legislation must not be applied thereto. Obviously, likewise, it really is a public purpose.

The privileges granted by the statute as an alternative to providing compensation by securing it through insurance in the state fund (a), by insuring it in stock or mutual companies, or (b) by obtaining permission to pay compensation directly upon satisfactory proof of financial ability, etc., do not in the least transform this law into one holding the employer directly liable; nor does his incurring in the alternative the same liability directly as a penalty for not complying with this law.

As to the first of these contentions, an instance in point is the frequent case of a poll tax for maintaining public roads, which, by almost immemorial usage, has in various states been permitted to be "worked out" by the person doing so many days' work on the road himself, or furnishing another. Such has never been held to render such laws other than tax laws, and much less to constitute them laws imposing "involuntary servitude."

As an illustration of the fundamental difference, also, the following might be considered: Undoubtedly, a law which would render the person who last crossed a bridge or culvert before (or when) it gave away, liable to replace the same without proving that its destruction was due to his fault would be void as in violation of the "due process" clauses, while a law imposing upon all automobiles a tax to be used in maintaining and replacing bridges and culverts would quite as certainly be good.

It would also not be beyond the power of the legislature to inflict such a penalty, in view of the public purpose of the law to impose the obligation to provide such compensation by insurance, since the failure of the employer to comply, to whatever extent such a failure is effective, withdraws his employees and their families from the benefits intended to be conferred, and to that extent actually defeats the purpose of the law. The penalty appears, then, to be entirely appropriate, and to amount merely to requiring the employer, at the option of the claimant, to repair the damage which his own failure to comply with the law has caused.

That the purpose is a public purpose, independent of the constitutional amendment, is clearly shown by the following from Cooley on Taxation, 2d ed. pp. 124 and 125: "The support of paupers and the giving assistance to those who

by reason of age, infirmity, or disability are likely to become such, is, by the practice and the common consent of civilized countries, a public purpose." See State ex rel. New Richmond v. Davidson, 114 Wis. 563, 88 N. W. 596, 90 N. W. 1067, 58 L.R.A. 739; State v. Cassidy, 22 Minn. 312, 21 Am. Rep. 765; Charlotte, C. & A. R. Co. v. Gibbes, 142 U. S. 386, 35 L. ed. 1051, 12 Sup. Ct. Rep. 255; Consolidated Coal Co. v. Illinois, 185 U. S. 207, 46 L. ed. 875, 22 Sup. Ct. Rep. 616; New York ex rel. New York Electric Lines Co. v. Squire, 145 U. S. 175, 36 L. ed. 666, 12 Sup. Ct. Rep. 880.

In Re Shattuck, 193 N. Y. 446, 86 N. E. 455, the decision was based by the court of appeals upon the following statement: "In view of the quite universal rule that charitable uses and public uses are synonymous," and in Exempt Firemen's Benev. Fund v. Roome, 93 N. Y. 313, 45 Am. Rep. 217, upon the proposition that a particular business could be taxed to support burdens of the government indirectly related to such business, and that the support of the volunteer firemen disabled by accident, disability, or old age, and their families, was a public purpose.

A compulsory insurance law to provide workmen's compensation, the sole method of insurance being in a state fund, has been sustained in State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 117 Pac. 1101, 2 N. C. C. A. 823, 3 N. C. C. A. 599, 37 L.R.A.(N.S.) 466. The basis for the decision was disapproval of the Ives decision as applied to a plan such as the compulsory insurance law of Washington, and the Washington compulsory insurance law was sustained as not in violation of the "due process" clause of the Federal Constitution, and as a reasonable police regulation.

In principle, also, the decision in Cunningham v. Northwestern Improv. Co. 44 Mont. 180, 119 Pac. 554, is that the power to enact a compulsory law exists, and that such enactment is not in violation of the "due process" clause of the Federal Constitution, though that court held the Montana act to be unconstitutional as not affording the equal protection of the law because the employer, having paid his insurance premium, could, notwithstanding, be held for damages. The idea was that he might pay these premiums, and still be held in every case for damages.

Both of these latter decisions, while referring to the power to tax, sustained the power to pass a compulsory insurance law upon the theory of the police power.

This principle was also accepted earlier by the highest courts of several states in relation to the imposition of a tax on the owners of dogs to raise a fund to reimburse the owners of sheep which were killed by dogs. The supreme court of Michigan in Van Horn v. People, 46 Mich. 183, 41 Am. Rep. 159, 9 N. W. 246, in sustaining it declared that it "is imposed as a police regulation," but also said that "it partakes, no doubt, of the character of a tax, and for many purposes might be so spoken of without harm."

The decision in the Van Horn Case has been followed in a line of cases collected by a note in 17 L.R.A.(N.S.) p. 855.

A very interesting and valuable decision, also sustaining a similar tax, was rendered by the court of appeals of Kentucky, in McGlone v. Womack, 129 Ky. 274, 111 S. W. 688, 17 L.R.A.(N.S.) 855.

In the last-mentioned decision the purpose was held to be a public one, the question of the impossibility of determining who is at fault discussed as it would be in a workmen's compensation case, and the reasonable character of the tax is established. The contrary view is also set forth very fully by three dissenting justices, and the case may be consulted to advantage for the arguments on both sides.

Concerning also the question of taxing for the purpose of regulation, consult Carthage v. Rhodes, 101 Mo. 175, 14 S. W. 181, 9 L.R.A. 352, where it is said: "Taxation may be for the purpose of raising revenue, or for the purpose of regulation. When for the purpose of regulation, it is an exercise of the police power of the state." See also Head Money Cases (Edye v. Robertson) 112 U. S. 580, 28 L. ed. 798, 5 Sup. Ct. Rep.

247, sustaining a tax upon shipowners, imposed to regulate immigration; also Mr. Justice Story's great work on the Constitution, § 973, as regards the Federal power of taxation and its not being limited "to purposes of revenue." In this connection, also, the decisions of the Supreme Court of the United States in the bank tax and the oleomargarine tax cases may be consulted, in which the court refused to question the purpose of Congress in levying a tax, it appearing upon the surface that a revenue would or might result.

It is to be remembered, also, that as regards the workmen's compensation law there has been a revenue in the form of premiums to the state fund, amounting in the first year to nearly $1,500,000, and also that, as regards compensation not provided by such revenue, the public purpose of the legislature will be fulfilled by the adoption of the alternative of insurance in stock or mutual companies, or by the carrying of his own risk by an employer who is found financially able to do this, and whose application to do so is approved; and likewise that it will directly tend, by means of the returns required by §§ 111 and 112, of the classification of risks and adjustments of premiums required by §§ 95 and 97, of the associations for accident prevention authorized by § 96, and by the mere fact of the imposition of the tax, to the discouragement and prevention of industrial accidents and the reduction of the damage caused thereby, all of which are valid and sufficient grounds for the exercise of the police power.

The Silent Lawyer

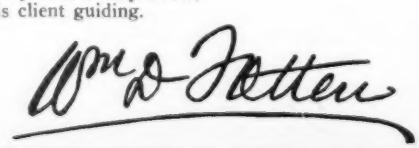
Whenever Lawyer Wisdom spoke,
And round him solemn silence broke,
His clients eyed him closely;
A quiet character by birth,
He seldom had a mood of mirth,
Nor said a word jocosely.

As silent as the famous sphinx,
With eyes as searching as the lynx,
Of genius in possession;
The laymen, filled with wonder, said,
"Friend Wisdom has a wondrous head
And makes a fine impression."

He could not paint the lily, nor
Engage in caustic wordy war.
In equity delighting,
He made the legal snarls decrease
And favored settlements and peace,
While others did the fighting.

As shallow waters murmuring keep,
And silence reigns within the deep,
By nature's law abiding,
A lawyer graceful speech may show
And silent lawyers law may know,
Each well his client guiding.

Seattle, Wash.



The Statutory Minimum Wage

BY ROME G. BROWN

of the Minneapolis Bar

Author of "The Minimum Wage"

THE Oregon minimum wage cases (Stettler v. O'Hara and Simpson v. O'Hara), in which the constitutionality of the statutory minimum wage will be determined, were submitted in the Federal Supreme Court December 17th, last. The decision undoubtedly will be announced next October. In the meantime the general attitude of those who are interested in these questions is that of waiting. Wage commissions, generally, have been postponing action; legislatures, generally, in which similar measures have been offered, have also been postponing action. Had the writer supposed last March that those cases were not to be decided before this time, he also would have postponed action; and would not then have promised to discuss the question for this issue of Case and Comment.

Minimum Wage Legislation

In 1912, Massachusetts (chap. 706, Acts 1912; and 330 and 673, Acts 1913) passed a so-called noncompulsory minimum wage statute; and the wage commission of that state has since been attempting to apply it to various occupations. In 1913, Nebraska (chap. 211) adopted the Massachusetts statute of 1912. In 1913, compulsory statutes were passed in Colorado (chap. 110), Minnesota (chap. 547), California (chap. 324), Oregon (chap. 62), Utah (chap. 63), Washington (chap. 174), and Wisconsin (§ 1729, 1–12 Stat. 1913; chap. 712, Laws of 1913). In 1915, Arkansas adopted a similar statute (chap. 191), and Idaho provided for a commission to investigate the question (chap. 136). While the Oregon courts upheld the statute of that state, the similar statute in Minnesota was held unconstitutional by Judge F. M. Catlin, of the state district court, on November 23, 1914 (A. M. Ramer Co. v. Evans and Williams v. Evans, which cases are now awaiting decision in the state supreme court).

Confusion of Terms

As usual, especially when the rights or obligations of labor are concerned, there have been, in the discussion of this question, much confusion of terms and much playing upon words, both by the layman and by the lawyer. We read much of "the right of workers to receive the necessaries of life," of "living wage," of the "minimum cost of living," of "wards of the state," and of "public welfare,"—and other phrases, the very enunciation of which is too often assumed to conclude an argument.

It is one thing to say that an individual has a right to be sustained in health and comfort, and to have that right supplied by the state or by the community in which he lives; and another thing to assert that that right is one which must be supplied by the person who happens at any time to bear the relation of employer to the one asserting the right in question. It is one thing to say that higher wages, in any particular occupation, would benefit a large number of the community, and therefore would benefit the community itself,—that is, would promote the public welfare; and another thing to assert that, for that reason alone, the state can and should legislate higher wages in private employment, and that such legislation must be upheld by the courts.

The Statutory Minimum Wage Defined

The compulsory minimum wage statute, such, for example, as that of Oregon, compels the employer in any occupation to pay, and compels the employee to demand for her work,—regardless of the efficiency of the employee, or of the worth of her work to the employer, or of the ability of the employer to pay,—at least, a wage equal to the amount necessary to furnish to the worker the cost of living in health and comfort. This minimum wage, it is provided, shall be fixed as to each occupation by a commission; and, when so fixed and promulgated, any employer in that occupation who pays less to any worker is subject to the penalty of imprisonment or fine, or both. Such are the statutes of Minnesota, Wisconsin, Colorado, California, and Washington, and others of the states mentioned. In Utah no intervention of a commission is provided; but the statute fixes a flat minimum rate for women workers. In Massachusetts and Nebraska, there is no penalty of fine or imprisonment for failure of the employer to meet the requirements of the statute. He is published, under state sanction, as a recalcitrant, and the publication of the official list is made compulsory upon newspapers. This latter sort of statute has been termed the "noncompulsory" minimum wage statute.

Compulsion by Blacklisting

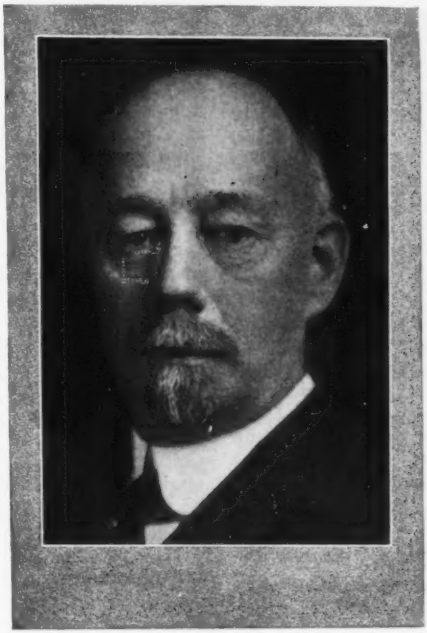
But such a statute as that of Massachusetts is, in effect, most obnoxiously compulsory. In its practical application, it is more repugnant to the business sense of the community, as weli as to established law, than the apparently more drastic statutes of Minnesota and Oregon. This could not, as well as now, be said of the Massachusetts statute a year ago, before its viciousness had been demonstrated by practice. The state commission and its wage boards become mere instruments for carrying out the demands of the employees. In terms, the statute affords employers a hearing upon the question of the reasonableness of the wage fixed and of their ability to pay. In practice, all such considerations are cast aside, including evidence of facts, except in so far as they accord with the preconceived notion as to what the wage should be in order to give to the employees all that they demand, and to take from the employers irrespective of their ability to pay. If an employer fails to pay the wage fixed, he is published throughout the state. The statute makes it a crime for any newspaper publisher to refuse thus publicly to blacklist an employer. He may be compelled thus publicly to hold up to censure his own relative, or his best paying advertiser—or even himself. Such a statute holds over every employer the threat of an official public blacklist and boycott, more severe and more damaging than any private boycott ever established.

Again, in practice, the Massachusetts statute results in discrimination. Its wage boards and commission fix different wages for different occupations, and even for different classes of employees in the same occupation. As the wage is fixed irrespective of the earning capacity of the employee, and is theoretically based upon the *individual* cost of living, then why has one worker a right to a living wage greater than that of another? The fact is that, although theoretically computed upon the basis of a living wage, it is not computed at all. It is simply fixed for each class, from time to time, as the various boards are influenced by the demands of the employees. Moreover, each wage, when fixed, is only a stepping-stone to a higher wage. Each class of employees is constantly seeking an increase, regardless of any basis of computation, and particularly regardless of the worth of the employee to the employer.

Experiments Elsewhere

The advocates of the minimum wage never fail to cite the so-called minimum wage statutes of New Zealand, Victoria, and England, as demonstrating both the economic advisability and the constitutionality of such statutes in this country. The experience, however, with these statutes in other countries, does not support the claims made, either economic or otherwise. They are there confined to comparatively few industries, and apply to a very limited number of workers.

After ten years' experience in Australasia with the statutory minimum wage, the British expert, Mr. Aves, who was sent by his government to examine conditions, reported that the experiment in those countries would not justify the adoption of a compulsory statute in England. From the legal view point the enactment and enforcement of minimum wage statutes in England and in Australasia establish no precedent or authority for that sort of legislation in this country. Those countries have no limitations upon the power of legislation such as exist here, the very existence of which here makes our form of government what it is, a constitutional democracy with express written limitations upon legislative powers, — limitations which were established and are maintained to preserve to every individual, beyond the danger of encroachment by legislatures, his fundamental rights of liberty of contract, the right of property, and the right to be protected against arbitrary oppression or confiscation. In those countries the power of the legislature is paramount. In our country the power of legislation is expressly limited; and the fundamental constitutional law is paramount.



ROME G. BROWN

The Liberty of Contract

The minimum wage statute says to the employer: You shall not employ, or contract to employ, a worker in your industry, except on the condition that you shall pay not less than so much per week. At the same time it says to the employee: As a condition of your making a contract to work in any occupation, you shall demand that you receive so much per week. Neither party can take into consideration any element except the mere fact that a state wage commission has fixed the price for work. It matters not that the employer could not pay such employee, and others of the same class, the wage fixed, and remain in business. It matters not that the employee in question is incapable of performing work which is a fair return for the wage fixed. Both are barred, under penalties, from making a contract which they mutually desire to make, and which would be for their mutual interests. If a different contract is made, then the statute steps in and changes the contract and compels enforcement as so changed. We, have, then, a statute which, from the view point of the employer, not only infringes his right of contract, but also deprives him of his property without due process of law. We have a statute which, from the view point of the employee, deprives him of his right to work and to make contracts for his work, and which therefore compels him to stay out of work unless he shall obtain a contract containing the prohibitive terms imposed on him. Such legislation encroaches upon the rights of individuals in the conduct of their private affairs.

In the recent case of the Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co. (decided July 20, 1915, by Judge Hough, in the United States district court of the southern district of New York), the right of a manufac-

turer to refuse to sell his goods was held paramount to any statutory prohibitions. It was held that the Congress could not give to one party the right to compel another party to sell goods of the latter's manufacture. In the words of Judge Hough: "If the Congress has sought to give one, the gift is invalid, because the statute takes from one person for the private use of another the first person's private property. Using the words "sell or sale" conceals the issue. If a man prefers to keep what he has, an offer of money to salve the taking thereof does not prevent such taking from being confiscation. The Cream of Wheat Company is a purely private concern, except as regulated by its creating law; it is an ordinary merchant whose business is affected by no public use whatever. The statute as construed by plaintiff descends upon that private merchant, and commands him to make a contract by which he transfers his property for a price, but against his will. The contract and the price are legally mere surplusage,—the constitutional violation lies in the compulsion, whereby he is deprived of his property for a private purpose. . . . Neither the nation nor any individual can take away its property with or without compensation for the private use of anyone."

Not Within the Police Power

The minimum wage statutes in this country generally apply to women workers, although in some states they are also extended to minors and apprentices of either sex. Most advocates of a statutory wage base their claim of constitutionality upon the police power of the state. They urge, as controlling precedents, the various decisions upholding regulation of hours and of working conditions. Such advocates forget that "there is a limit to the valid exercise of the police power by the state," and that "the mere assertion that the subject relates to the public health does not necessarily render the enactment valid;" and that "a public welfare or public health statute, in order to be held valid as an exercise of a police power, *must have* a more direct relation as a means to an end, and the end itself must be appropriate and legitimate." Lochner v. New York, 198 U. S. 45, 56; also dissenting opinion, p. 68, 49 L. ed. 937, 941, 946, 25 Sup. Ct. Rep. 539, 3 Ann. Cas. 1133.

However one may view the Lochner decision, this principle there announced, as to the limit of the exercise of the police power, has been consistently followed in all cases pertaining to the statutory regulation of occupations. The regulation of hours in *public* employment has been upheld as not involving the question of police power of the state. Atkin v. Kansas, 191 U. S. 207, 48 L. ed. 148, 24 Sup. Ct. Rep. 124. Regulation of hours in *private* employment, fixing maximum hours for men or for women in any occupation, has been upheld *only,* because the particular occupations so regulated involve hazards to workers if longer hours applied. Holden v. Hardy, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383; Muller v. Oregon, 208 U. S. 412, 52 L. ed. 551, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957. In all such cases the protection to the worker is one against hazards or needs which arise out of the employment in question, or which are peculiar, in such employment, to the particular class of employees to whom the regulation is applied. The factory acts impose expense and regulation upon the employer to protect employees against hazards of unsafe machinery and of unsanitary conditions of work,—hazards only which are peculiar to the employment in question, and which arise out of the fact and nature of the employment. Again, workmen's compensation acts protect the employee at the expense of the employer against casualties arising out of and because of the hazards within the employment. All these statutes have been upheld only for the reason that, while enacted as an exercise of the police power for the protection of health, morals, and public welfare, they have, in their application, a real, substantial relation between the protection sought and the needs and hazards arising out of and because of such employment. The regulation of rates of common carriers, and other regulations of quasi-public enterprises, have no application here.

Munn v. Illinois, 94 U. S. 125, 24 L. ed. 84.

The Statutory Wage Distinguished

But the need of a "living" is an *individual* need. It exists before employment, and during employment, and after employment. The need in question here is diminished during employment to the extent that the actual wage obtained contributes to the amount necessary to supply the cost of living. The hazards and dangers arising from this individual need are less during and because of employment than they are without employment. They are without real or substantial relation to the fact of employment or to any particular employment. Even if we admit the ethical and economic view point, that each individual has a "generic" right to receive the full cost of living in health and comfort, it does not follow that another individual is or can be obligated to supply that need, simply because there is the relation between the two of employee and employer.

Here is the crux of the question, so far as the constitutionality of the statutory minimum wage is concerned. If the employer can by statute be compelled to supply in full this individual need, because the one to be benefited happens to be on his pay roll, then there is no limit to which the property of the employer can be taken to supply this and other needs which are purely individual. He could as well be compelled to provide sickness benefits, not only for the employee, but also for his children and for all dependent on him. He could be compelled to provide old age benefits for the employee and for his family. He could as well be compelled to submit to a division of his property with those who are or have been on his pay roll,—all because such division would conduce to the health, comfort, and happiness of his employees, and because some legislative body has chosen to view such legislation and its enforcement as either immediately or ultimately conducive to the "public welfare."

Indeed, it is argued in support of these statutes, that, when a legislature has enacted it's economic views as to what is, or is not, for the "public welfare," then it is beyond the power of the courts to say that the legislature is not right; and further that it is beyond the power of the courts to deny the pronouncement of the legislature that the regulations in question have a real and substantial relation to the objects professedly sought to be accomplished.

These Statutes are Socialistic

What is or is not for the "public welfare" depends upon the view point. Discussing the question as one which is purely ethical or economic, we may agree or differ without encroaching upon questions which involve the stability of our form of government. The fact is too often overlooked, however, that when our government was established, its makers, wisely as most of us believe, deemed that it was and would ever be for the public welfare that the fundamental law should express certain limitations upon legislative power. That belief was written into our Federal Constitution. Any view of the public welfare, as an abstract proposition, which conflicts with the view thus established as the foundation of our government, must, until changed by constitutional amendment, be regarded as impossible of enforcement by the courts. The socialists would change our form of government; and they frankly admit that a radical change of the Constitution is necessary before their view of what is public welfare can be realized. They would establish a government under which the rights of private property, the sanctity of which is the very basis of our present form of government, are eliminated, and under which, by legislative action through majority vote, a division of property can be enforced. They would open the door to unlimited confiscation of private property by the state, and to such disposition of the same between property holders as the legislature shall dictate. While, however, our present form of government lasts, such arbitrary and uncompensated deprivation of private property cannot be brought about.

But it is precisely such sort of division of property which is the basis of the statutory minimum wage. It means a forced contribution by one person, or by

one class of persons, to another person, or to another class of persons, to supply the individual needs of the latter. It is a forced contribution, under the guise of wages, as to every cent of wage imposed beyond the fair worth of the work furnished by the employee in return. The socialistic nature of these statutes is demonstrated by their advocates, who assert that an employer should be compelled to pay the full minimum wage established, even if it takes away all his profits. Indeed, they assert that, if he cannot pay it out of profits, then he should pay it out of capital. This means nothing less than a division of property itself between the one who has and the one who has not; and that, too, merely because one has and the other has not. Moreover, the same supporters of the minimum wage assert that, if the employer must, in order to pay the wage, pay it out of his capital investment, then he must do so, or resort to the only alternative,—that is go out of business. They would then say good riddance to him, as a "parasite" on the community.

Economic Objections

The objections upon economic grounds are even more convincing. The statutory minimum wage puts an embargo upon home industries. Competition today is not confined to intrastate trade. Prices are determined by the markets of the entire country, indeed, of the world. Most manufacturers, and a great many wholesale and retail mercantile houses, have the larger part of their trade outside the limits of their own state. They have to meet competitors whose cost of production is not arbitrarily raised by an artificial wage cost. This means unequal competition as between home industries and those outside of the state, and also as against those of foreign countries. Any state which passes a minimum wage statute puts an embargo on its own industries in favor of extra-state competitors.

Again, the inevitable result of the enforcement of the minimum wage statute is to drive the worker out of employment, rather than to increase the advantages of employment. The employer cannot, and will not, for any considerable length of time, keep employees on his pay roll whose efficiency is below the standard of the fixed minimum wage. The employee is forbidden to work for what he can earn. The employer is forbidden to employ the worker for what the latter is worth. The inevitable result is that either the employer must go out of business, or the employee must go out of employment; and if the former result occurs, then the latter inevitably follows. The worker who is not capable of earning the full minimum wage would nevertheless be glad to work for what he is worth. In many cases his wages are sufficient to support himself. Together with what other members of the family earn, there is obtained an ample fund to support all in health and comfort. But all such are given from employment and kept jobless, unless, at their own expense and without the assistance of employment in the meantime, they shall achieve a standard of efficiency equal to that of the minimum wage.

This effect upon the employee class has been demonstrated by experience. The first industry in the United States to have applied to it the statutory minimum wage was that of the brush making industry in Massachusetts, in which, from its very nature, an unusually large number of unskilled workers are employed. One brush concern, after the minimum wage for brush makers took effect, discharged over one hundred of its unskilled employees. Then it reorganized its methods of work so that the less skilled labor is done by those who also perform more skilled work. The total wage, however, is $40,000 a year less than that paid before. Many other of the brush concerns in Massachusetts discharged a large number of their employees who were incapable of earning the wage fixed. An investigation six months afterwards showed that two thirds of the workers so discharged had not since been able to get employment in any line of work at any price, and that many were engaged in other employments where a minimum wage was not yet fixed, and were receiving less than when discharged from their work as brush makers.

Thus, the arbitrary minimum tends more and more to become the maximum, to the disadvantage of the skilled employees entitled to the higher wages. The statutory minimum wage tends to level all wages. This would necessitate another remedy, which would be consistent if a minimum wage can be fixed, and that is that all wages be fixed by statute.

Indeed, if the legislature can fix the price of labor in private employment irrespective of its worth, and irrespective of the ability of the employer to pay, there is no reason why the same legislature, upon the same principle, or lack of principle, cannot fix the price of all things which are now subject to private contract. It could fix prices of goods sold by the merchant, of the machinery which is sold by the manufacturer, and of all commodities.

Wages and Morals

Judge Catlin, of Minnesota, in the decision already cited, says: "But there is no reasonable foundation for holding this act to be necessary or appropriate to protect the safety, health, or morals of working women, nor is it reasonably calculated to promote the general welfare of the public in the manner claimed by its advocates. On the contrary, it is quite as likely in actual results to increase both distress and immorality, if morals are dependent on wages. Hence, it is not a valid police regulation."

It follows, of course, that if insufficient wages during employment produce immorality, then lack of employment and the consequent lack of any wages would produce more immorality.

This claim that minimum wage statutes are protective of the morals of women workers was most sensationally asserted a year or two ago at the beginning of the minimum wage agitation in this country. But careful investigation has shown that there is no relation between wages and morals. The reasons are obvious.

Paternalistic Interference

The chief cause of the continued agitation for this measure, which is a menace both to the employee and the employer, is that many persist in advocating what the workers *think* they want, instead of instructing those whose interests they assume to represent as to what is really for their benefit. Such course lends to the sensationalist an opportunity to indulge in sentimental platitudes concerning the hardships and needs of the worker and his failure to receive his proper share of the world's goods. Questions of charity are confounded with questions of law. The benevolence of the living wage, ethically viewed, cannot be disputed. For this reason the author of "A Living Wage," so long as he confined himself to purely ethical considerations, was unanswerable. Upon the economic phases of the question he was also to some degree convincing. In his book he expressly recognizes the fact (pp. 313, 314) that "changes in the Federal Constitution and in the Constitutions of the several states would be a preliminary requisite to any such legislation." But later, in his speech at Ford Hall, in Boston, on February 7th, last, Father Ryan predicted dire results to the judiciary of this country if the Federal Supreme Court shall hold such legislation unconstitutional. (See the "Survey" of March 13, 1915, page 660; also of April 10, 1915, page 56.)

The sentimentally sensational view point, which brushes aside with a catchphrase or an epithet all considerations of law and economics, is presented by another writer of recognized ability in his way, but whose discussions of the subject serve only to exploit an extensive vocabulary and a somewhat exceptional gift at phrase-making. (See "The New Republic" of March 27, 1915, supplement; also of July 3, 1915, page 221.) Such advocates as Walter Lippmann easily pass over the real essence of the controversy which is involved in the question of a statutory minimum wage. They choose not to see that the fixing of a minimum wage is of itself in a measure the fixing of a maximum wage, and that the fixing of a minimum wage by the legislature must in the end require, and at the same time justify, a legislative fixing of maximum wages, and that that must be followed by the

statutory fixing of the prices of all commodities.

If the legislature can forbid an employee to contract with an employer for a wage commensurate with his ability, it can compel that employee to work for a wage that is less than is commensurate with his ability. The principle of compulsory wage necessarily involves the principle of compulsory employment. For that reason, beside others, the leading representatives of labor, and particularly of the trades unions, shrink from the statutory minimum wage as a step toward slavery. Mr. Samuel Gompers, president of the American Federation of Labor, has so expressed his views in unqualified terms. President Wilson and others, who have studied the question from an impartial view point, recognize that the ultimate tendency of the statutory minimum wage is to lower high wages rather than to raise low wages. They view statutes as derogatory to the interests of the workers and of the community as a whole.

Such Statutes Unworkable and Unenforceable

It is unnecessary to detail the inconsistencies of the various statutes enacting a minimum wage, wherein a different standard of living is made the basis for the wage as to different classes of workers, all of whose actual standards of living are the same. Every wage commission and wage board has been confronted with unsurmountable obstacles in attempting to make practical application of these statutes.

Experience has proven not only that, from the view point of economics, the minimum wage statute is unworkable and repugnant to the interests of both employee and employer, but also that, when applied, it deprives both the employee and the employer of rights of liberty and of property which are vouchsafed in this country by fundamental law.

Roma S. Brown

Democracy

We Americans approach these present-day problems in the spirit of democracy, and with more than a century of schooling in democracy behind us; but are we quite sure that we know what democracy means and implies? For there is a democracy false and a democracy true, and it is just when the economic or social problem presses hardest for solution that the sharp contrast between the two is lost sight of and the line which divides them is blurred.

Was Lord Byron right when he cried, "What is democracy? An aristocracy of blackguards!" or was the truth not with Mazzini, who defined democracy as "the progress of all through all, under the leadership of the best and wisest." Everything depends upon the answer.

The state is founded upon justice, and justice involves liberty, and liberty denies economic equality; because equality of ability, of efficiency, and even of physical force, are unknown among men. To secure an equality which is other than the political equality incident to liberty, the more efficient must be shackled that they may not outrun the less efficient, for there is no known device by which the less efficient can be spurred on to equal the accomplishment of the more efficient. Objective conditions must, of course, be equalized, particularly those conditions which are created by the state. But this is true, not because such an equality is an end in itself, but because it is essential to liberty.—Nicholas Murray Butler, President Columbia University.

Social Insurance

BY HENRY W. BULLOCK

Of the Indianapolis Bar

TO THE extent that men co-operate and work together, just to that extent do they rise above a state of savagery. The purpose of civilized society is to assist each member through collective effort, and thereby give greater security and protection. Each contributes a small portion of his income or property for the protection which organized society gives. There is no room in society for individualism; and individual liability, or the idea that any employer or employee should carry his own risk, is entirely foreign to social insurance. Back as far as A. D. 1041, we find the regulations of the Guild at Exeter providing that "when any member go abroad each of his fellow members shall contribute five pence, and if any member's house burn then one penny." The funds are contributed by all; they who escape disaster profit, and they who suffer are not wholly destroyed. In 1558 Lord Keeper Bacon said in Parliament: "Doth not the wise merchant give part to have the rest insured?" and in 1601 an English statute was passed concerning marine insurance reading: "Upon loss or perishing of any ship there followeth not the undoing of any man, but the loss lighteth rather easily upon many, than heavily upon the few, and rather upon them that adventure not than upon those who do adventure."

The purpose of social insurance is to distribute the loss of disabilities and deaths among the many members of society, consumers and producers, rather than let it rest heavily upon the workman who suffers, or upon the employer in whose service he is engaged. A single catastrophe may not only destroy the earning powers of many workmen, but, if borne by the employer alone, may wreck his business, so, as in case of life and fire insurance, they should contribute to a common fund, and equalize the uncertainties of industry and the insecurity of family subsistence. By a social insurance fund, surety in business and life is substituted for uncertainty. Every business man is confronted with the possibility of catastrophe, and every man with unforeseen disabilities, and society has a right to say they shall not expose themselves to destruction, but shall make their affairs secure by contributing a small part of their income to a common fund to be maintained for that purpose at small cost. We have a right to take the employers' business and the workmen's subsistence out of a gambler's chance, and put them on a safe and secure foundation under the law of average.

History repeats itself with much precision. We know that out of 100,000 persons a certain number have met death and injury, and this is liable to occur again under like conditions; so, with the law of average for a foundation, we can calculate the probable loss and insure against uncertainties; for it is not certain what particular individual will suffer, nor what particular coal mine or factory will be subject to loss, but we know that a certain number will suffer. Seventeen clergymen out of every 100,000 die from accident, while among tool makers it is thirty-nine, and corn millers, seventy-one.

Uncertainty of life has a repellent and depressing influence upon the human mind, while certainty gives hope and spirit to all phases of human industry; therefore a social insurance fund which will give security and certainty is of great economic value, as it would bring certainty out of uncertainty, and give a solid basis upon which business can be

conducted. That we must work does not depress, but that we must labor without ample reward or hope of bettering our condition is discouraging. Commercial enterprises will not be entered into unless there is some prospect of security. Security should be given to the employee's family as well as to the employee's property. When the European war began, Congress voted $5,000,000 for ship insurance, but none to insure the seamen that manned the vessels. Men should not take a gambler's chance, but should be compelled to pay into an insurance fund maintained at cost, so that in case of disaster their business will not be destroyed nor their employees suffer; so there will be no shock to the business of the community through the destruction of a plant which society supports, and for whose promotion the people have arranged their business, invested their money, and established their homes and institutions.

HENRY W. BULLOCK

Society, in order to satisfy its demands, employs factories, ships, and workmen to provide food and clothing; it invests its money in these enterprises and their products. Industry thus becomes the servant of society, and becomes affected with public interest. Society has a right to demand that industry pay sufficient wage and use the proper methods to safeguard life, so that disabled workmen will not be a charge upon the community. It has a right to demand that the profits secured from the investment by the public shall not be squandered to the injury of the public. Society pays the bills, and should say how it will tax itself to support industry and the dependents it produces.

Reasons for Social Insurance.

Our industries have progressed far beyond the dream of Watt and Arkwright. From the simple loom there has come the complex life of the modern industries. As life becomes more complex, we become more dependent upon each other for production, transportation, and distribution of food and clothing; and those who distribute and those who work must be paid by all for whom they work. Accidents result from a multiplicity of contributing causes, and thus become social, instead of individual, in their origin. A high national standard can only be protected through a high home life. High home life cannot be maintained without social insurance, which will equalize burdens and rewards. Virtue is not nourished by an empty stomach, nor does it come from the debauchery, but from things which satisfy and produce health. Wealth, schools, and art galleries have no inspiration to the hungry; none can be spiritually uplifted when the pangs of appetite are gnawing at the vitals of their body which holds their spirit; none can be enraptured by external surroundings when they are cast down and depressed by forces greater than those which might otherwise elevate.

The standard of comfort and care of its citizens is a first test of a nation's civilization. The work is altruistic and economic. A people's destiny is deter-

mined by their economic conditions. Their relations to each other are the reflections of their moral ideals, which lie at the foundation of their society; their laws express their morality, which prompts their deeds.

We must have more comfort, with less labor and misery; we must have more certainty of comfort, and less probability of want. We need conditions which will increase happiness and decrease misery. We need more wealth and fewer slums. We must give better bread for labor, as well as require better labor for bread. Society must be just to labor, which produces its comforts. Justice is the essence of government. It is the duty of this nation to do justice to each citizen, as it must protect itself internally as well as externally; law must not only punish evil and polish manners, but must produce positive good. Happiness is the end of government. Misery is a condition to be decreased by government, else civilization is a failure.

A nation of men and women sick in body, depressed in mind, and bitter in thought, cannot be a strong defense to a nation in its time of trial, either in peace or war.

We are interested in a higher standard of manhood and womanhood for living purposes. Good health and a hopeful spirit are essential to national strength. Care at birth, care during childhood, fresh air, wholesome food, cleanliness, intelligent care, sanitary living and housing, educated parents, exercise, play, hopefulness, and agreeable surroundings, freedom from overcrowding and a consequent decrease of juvenile vices, security of income as well as of person,—are all necessary for national progress. Germany, having cared well for her people for the last two generations, is now being amply repaid for her expenditures by service and loyalty in trenches and on fields of blood.

There can be no progress without pleasure and spirit, and no pleasure without leisure, and no leisure without a staple income. We must have time to learn, meditate, relax, concentrate, communicate, and enjoy; to obtain these we must have higher wages for workers, and we must have cheaper production for consumers. Both can be accomplished through the increased power of production, and the saving of needless effort and burdens that now affect industry; and we must secure the family against want. We then will have congeniality of sentiment, cohesion, and national solidarity.

We are seeking to strengthen the nation by producing more pleasure and less misery; we are trying to enforce the golden rule in industry, and find that many old forms and maxims must pass away.

Misery, want, and wealth have always lived side by side, but that is no compliment to the conditions which produce misery, or to the people who permit or tolerate it. Misery is an unnatural condition resulting from wrongs often created by exploiting ignorance under the protection or toleration of a people indifferent to their own social welfare. We have an abundance to give pleasure to all if properly distributed; food and raiment and fuel that the hoarded will not emit sparks of pleasure. A more just distribution of the things which comfort can be accomplished without affecting the rights of anyone. They who produce must have, they who create must enjoy. Our fathers came hither to escape paying tribute to those who toiled not but sought to retain that which our fathers spun. For this they crossed the Alleghenies, where no indenture of servitude was even written. So we must escape the parasites of industry, and secure greater regard for both brain and brawn. We must provide incomes for our workers sufficient for their entire life, including the dependency of youth, the uncertainties of maturity, and the infirmities of old age; otherwise their income is not a living wage. We must subdue the passions for exploitation which produce misery and convert the power of misdirected energy into social forces productive of comfort.

The Problem.

It is estimated that there are 2,000,000 accidents to our industrial workers each year, that 35,000 wage-earners are killed each year while in the course of their employment. Statistics of Massachusetts

show that 91 out of every 1,000 workers meet with accident. It is probably true that 300 out of every 1,000 suffer from sickness, and that there are 10,000,000 cases of disability annually among our 35,000,000 wage-earners, each averaging two weeks in duration.

Not more than 25 per cent of our wage-earners have property amounting to $1,000 over and above their household effects. The average annual wage among male workers in the United States is less than $600. Three fourths of all male workers, and nineteen twentieths of all female workers, receive less than $600 per annum. A survey in Massachusetts of 177,000 persons showed that the average income of families was $13.24; $11.17 for couples; $7.32 for individual males, and $4.50 for individuals females. Fully one third of the wage-earners of America are out of employment a part of the year. Coal miners average only 250 days, and the building trades often less. Twenty per cent of wage-earners over sixty-five years of age in our industrial states are supported partly or wholly by charity or benevolence.

With the average earner possessing neither land, workshop, nor tools with which his work is done, he is turned from an opportunity of individual enterprises; and as labor contracts between individual workers and large concerns must lack the usual mutuality of contracts,—the average worker is wholly dependent on others for his subsistence,—his wages therefore become none too large, and subsistence must necessarily lack certainty. The margin between income and expenditure must be so narrow that any interruption in income means certain suffering. Hence the necessity for some well-defined plan which will bring more certainty out of the present insecurity, and more substantial comfort out of the present conditions, from which much misery and hopelessness result. Social insurance would distribute the risk and burdens over a period sufficiently long and among a number sufficiently large, so that the losses would be safely and conveniently diffused in such time and numbers that no hardships would result to any one individual.

The Massachusetts investigation showed that of the dependent class 46.6 per cent were not able to work; 37.9 per cent of which had at one time owned property; 23.3 per cent of which was less than $500; 22.8 per cent from $500 to $1,000; and 53.9 per cent over $1,000, most of which had been lost through sickness or misfortune; 60 per cent being due to sickness alone. Only 17 per cent of dependency is caused by intemperance (Dr. Devine, "Misery and Its Causes," p. 117).

We are a nation wasteful of life and material things. We must conserve life if we would progress forward. We must have intelligence and conscience. We must act together, co-operate, and prevent distress. Modern penology seeks to prevent waste. And while it seeks to lessen crime it devotes itself to the prevention of sickness and want,—its causes. This makes life worth living and creates a desire to accumulate the things which make life pleasant, and thus increases public security through the new love of the government which maintains such desirable conditions."

It is appalling to know that more than half a million lives are shortened annually through disabilities that can be prevented. More than one half of the workers in the United States die before they reach the age of fifty-five; 10 per cent of all deaths occur through accident; 52 per cent of deaths among steam-road employees occur through accident; iron and steel workers 16 per cent; printers 10.7 per cent; carpenters 9.3 per cent; school teachers 3.8 per cent; lawyers 4 per cent; surveyors 15 per cent; clergymen 3 per cent. Out of every 10,000 population, 8 deaths are caused by accident. In Great Britian 154 out of every 1,000 suffer disability by accident. In Massachusetts 91 out of every 1,000 workers suffer an accident. Workers in auto factories, 213 out of every 1,000 suffer accident; foundries 182; printing plants 105; furniture factories 80; cotton mills 66; shoe factories 48; clothing factories 15, with the average disability lasting 12.89 days. This is the experience of 100,000 accidents, but it does not take into consideration disability from sick-

ness or disabilities occurring out of employment.

What is Being Done.

Social insurance is a movement for a more just distribution of the means of subsistence,—a good equal distribution of the burdens, and a fairer distribution of benefits to those deserving; it seeks a democracy of comfort. It seeks a plan whereby the many may, under the law of average, bear the burdens that befall the few. It seeks to encourage self help, but recognizes that plans must not only be laid whereby we *may* save for the days of invalidity, unemployment, and old age, but that we must have a system whereby we *must* save for the days of misfortune. It further recognizes that human beings must be cared for and educated during youth as a period of preparation, pleasure, and growth; and old age as a period of rest, reflection, and enjoyment.

On February 19, 1907, Emperor William II. in his throne speech before the Reichstag, said "that legislation rests upon the principle of social duty to the working classes, and is therefore independent of parties." On November 17, 1881, Emperor William I., in speaking of the duty of the Imperial government to promote the common welfare, outlined the policy of the Imperial government as follows: "First of all, to this end a sketch of a law relating to the insurance of workmen against loss of accidents in industry has been prepared. By its side and supplementing it will be offered a method of organizing sickness-insurance funds. But also those who, by reason of age or disability, have become unable to earn a living, have a well-founded claim upon the community for a larger measure of state care than has hitherto been given them. To find the right way and means for this care is a difficult task, but also one of the highest duties of every state which rests upon the Christian life of the people. The close union of the real forces of this people's life with incorporated societies under state protection and state help will, as we hope, make possible the solution of problems for which power of the government alone would not in the same degree be adequate."

Other countries followed with sick insurance laws: Austria, 1888; Denmark, 1891; Hungary 1891–1907; Sweden, 1891; Luxumberg 1902–1908; Italy, 1886; Norway, 1894–1906; Finland, 1907; Holland, 1901; Belgium, 1904; Switzerland, 1912; France, 1901; England, 1911.

In United States.

In 1907 Massachusetts passed a law providing for savings banks annuity, and Wisconsin has a state life insurance plan.

Our modern labor unions and fraternities patterned after mediæval guilds are productive of perhaps the most good of all agencies in providing accident, unemployment, and death benefits, many millions of dollars annually are spent by them through local and international unions, prominent among them are the printers, carpenters, bricklayers, barbers, cigar-makers, and various railroad brotherhoods.

Fraternal insurance and fraternal benevolent organizations to the number of 250 pay annually $100,000,000 in death benefits, and perhaps much greater sums in weekly benefits for disability and small mortuary benefits. Twenty-six commercial insurance companies conducted for gain collect annually $125,000,000 in premiums, and pay out in claims $52,000,000 on what is known as industrial or small policies, where the premiums are collected weekly or monthly. To these may be added stock and mutual casualty companies which pay stated sums for disabilities. In 1914 sixteen stock casualty companies collected $23,393,000 premiums on sick and accident policies in the United States, and paid out $6,434,000 for sickness and accidents. This does not include the numerous mutual associations, that do a large business.

Old age, disability, and retirement benefits for municipal policemen, firemen, and for school teachers are provided for in several states. About one per cent of all corporations have sick, accident, relief, or old age funds. Those have beneficial results, but as a permanent system are wholly inadequate; the investment of their funds are not supervised by public authority; the funds are created from the wage fund or em-

ployees, but employees have no security of employment, as they may be discharged for any or no cause; they have a tendency to handicap employees by causing them to accept or continue labor under uncongenial conditions, and prevent the mobility of labor, as an employee seeking employment with other companies or in other states, where family ties, climate, or industrial conditions offer inducements, must forfeit participation in funds created by his labor. Sometimes these plans are the highly polished veneer seen by the public, whose purpose is to conceal an inferior wage system.

Employers who wish to deal fairly with employees may be handicapped by competitors who deal less generously, and then it is conceded that they lack uniformity. Law must often define and enforce rules of human conduct, for all alike; hence all systems should be governed by law.

Labor Contracts.

That form of social insurance known as workmen's compensation is founded on two theories; first, that industry causes certain disabilities, and therefore industry as a whole should bear the burdens, and for this reason the legislature should write into the contract of employment a provision that the employer of the workmen shall make the payment and be liable for the same. This makes the liability individual, and results in the employer adding the cost of compensation to his fixed or overhead expenses, or perhaps increasing the cost of his production to the consumers of his products. This is not social insurance, but a law imposing individual liability without fault. It is merely writing a new labor contract; true, employers who are individually liable, in order to escape disaster, seek the law of average by insuring their liability with commercial concerns, whose underwriting experience is sufficiently large to permit them to come under the law of average. These laws simply say that if an employer does not agree to pay compensation for accidents occurring to his employees arising in course of employment without regard to fault, he shall not have the benefit of certain common-law defenses, and if the workmen do not agree to accept a specified small percentage of their wages in full compensation for any injury occurring in course of employment, that the employer shall have certain defenses in case of litigation. The courts have held such laws valid.

These laws are mere acts to govern contracts of employment,—providing plans whereby employees receive greater care from employers who provide them, on penalty of having no defense if litigation ensues. They result in social benefit, but they are not social insurance schemes. Employers affected usually insure their individual liability in private insurance companies at rates commercially profitably. It is purely a commercial transaction, and no more social than any other business whose results increase happiness or bring gain to a community.

This is justice on sociological grounds, as a state has power to regulate industries for the purpose of promoting the economic welfare of the community. The legislature has always in some manner regarded the relations of employer and employee as a proper subject of legislation, and not absolute between the parties.

The liberty of contract may be restrained if exercised contrary to established public policy, where public interest or the safety and welfare of the state require its curtailment. Thus, contracts with sailors, for their services are exceptional in their character and may be subjected to special restriction;[1] contracts for the charges of pension attorneys may be restricted;[2] gambling contracts may be restrained;[3] and contracts or combinations in restraint of the operation of the

[1] Patterson v. The Eudora, 190 U. S. 169, 47 L. ed. 1002, 23 Sup. Ct. Rep. 821.

[2] Frisbie v. United States, 157 U. S. 160, 39 L. ed. 657, 15 Sup. Ct. Rep. 586; Ornstine v. Cary, 204 U. S. 669, 51 L. ed. 672, 27 Sup. Ct. Rep. 788.

[3] Lottery Case (Champion v. Ames) 188 U. S. 321, 47 L. ed. 492, 23 Sup. Ct. Rep. 321, 13 Am. Crim. Rep. 561.

[4] Addyston Pipe Case, 175 U. S. 211, 44 L. ed. 136, 20 Sup. Ct. Rep. 96.

law of competition.[4] Such laws have been upheld.[5]

"In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be a suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression.[6]

"There must indeed be a certain freedom of contract, and, as there cannot be a precise verbal expression of the limitations of it, arguments against any particular limitations may have plausible strength, and yet many legal restrictions have been and must be put upon such freedom, in adapting human laws to human conduct and necessities." [7]

That form of law which suggests to employers that if they do not pay their employees certain sums for disabilities occurring in the course of employment, certain common-law defenses will not be available as defenses to action for damages, have been upheld.[8]

Court have upheld laws regulating contracts, such as relating to assignment of wages;[9] killing of infected animals;[10] registration of titles to land;[11] assignment to railroad of insurance policy on property destroyed by fire for which railroad is liable;[12] pollution of streams;[13] regulating sales;[14] mill acts;[15] regulation of insurance contracts;[16] determining standard of milk;[17] sale of oleomargarine;[18] regulation of loans by pawnbrokers.[19]

(To Be Continued)

[5] Atkin v. Kansas, 191 U. S. 207, 48 L. ed. 148, 24 Sup. Ct. Rep. 124; Holden v. Hardy, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383; Knoxville Iron Co. v. Harbison, 183 U. S. 18, 46 L. ed. 60, 22 Sup. Ct. Rep. 1; Cleveland, C. C. & St. L. R. Co. v. Marshall, — Ind. —, 105 N. E. 570.

[6] Chicago, B. & Q. R. Co. v. MaGuire, 219 U. S. 570, 55 L. ed. 339, 31 Sup. Ct. Rep. 259.

[7] Mutual Loan Co. v. Martell, 222 U. S. 225, 56 L. ed. 175, 32 Sup. Ct. Rep. 74, Ann. Cas. 1913B, 529, 200 Mass. 482, 128 Am. St. Rep. 446, 86 N. E. 916, 43 L.R.A.(N.S.) 746.

[8] Mathison v. Minneapolis Street R. Co. 126 Minn. 286, 148 N. W. 71, 5 N. C. C. A. 871, L.R.A.—; Courter v. Simpson Constr. Co. 264 Ill. 488, 106 N. E. 350, 6 N. C. C. A. 548; State ex rel. Nelson-Spelliscy Co. v. District Ct. — Minn. —, 150 N. W. 623; Kentucky State Journal Co. v. Workmen's Compensation Bd. 161 Ky. 562, 170 S. W. 437, 1166, L.R.A.—, 162 Ky. 387, 172 S. W. 674; Massachusetts Statute; Opinion of Justices, 209 Mass. 607, 96 N. E. 308, 1 N. C. C. A. 557; Borgnis v. Falk Co. 147 Wis. 327, 133 N. W. 224, 3 N. C. C. A. 649, 37 L.R.A.(N.S.) 489; State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 117 Pac. 1101, 2 N. C. C. A. 823, 3 N. C. C. A. 599, 37 L.R.A.(N.S.) 466; State ex rel. Yaple v. Creamer, 85 Ohio St. 349, 97 N. E. 602, 39 L.R.A.(N.S.) 694; Sexton v. Newark Dist. Teleg. Co. 84 N. J. L. 85, 86 Atl. 451, 3 N. C. C. A. 569, 86 N. J. L. 701, 91 Atl. 1070; Cunningham v. Northwestern Improv. Co. 44 Mont. 180, 119 Pac. 554; Stoll v. Pacific Coast S. S. Co. 205 Fed. 169; Second Employers Liability Cases (Mondou v. New York, N. H. & H. R. Co.) 223 U. S. 1, 56 L. ed. 327, 32 Sup. Ct. Rep. 169, 1 N. C. C. A. 895, 38 L.R.A.(N.S.) 44; Deibeikis v. Link-Belt Co. 261 Ill. 454, 104 N. E. 211, Ann. Cas. 1915A, 241, 5 N. C. C. A. 401; Crooks v. Tazewell Co. 263 Ill. 343, 105 N. E. 132, 5 N. C. C. A. 410; Dietz v. Big Muddy Coal & I. Co. 263 Ill. 480, 105 N. E. 289, 5 N. C. C. A. 419; O'Connell v. Simms Magneto Co. 85 N. J. L. 64, 89 Atl. 922, 4 N. C. C. A. 590; Huyett v. Pennsylvania R. Co. 86 N. J. L. 683, 92 Atl. 58; Memphis Cotton Oil Co. v. Tolbert, — Tex. Civ. App. —, 171 S. W. 309; Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 59 L. ed. —, 35 Sup. Ct. Rep. 167; Shade v. Ash Grove Lime & Portland Cement Co. 92 Kan. 146, 139 Pac. 1193, 5 N. C. C. A. 763, 93 Kan. 257, 144 Pac. 249; Zumkehr v. Diamond Portland Cement Co. 23 Ohio S. & C. P. Dec. 224; Pendar v. H. & B. American Mach. Co. 35 R. I. 321, 87 Atl. 1, 4 N. C. C. A. 600, L.R.A.—; State v. Mountain Timber Co. 75 Wash. 581, 135 Pac. 645, 4 N. C. C. A. 811, L.R.A.—.

[9] McCallum v. Simplex Electrical Co. 197 Mass. 388, 83 N. E. 1108.

[10] Miller v. Horton, 152 Mass. 540, 23 Am. St. Rep. 850, 26 N. E. 100, 10 L.R.A. 116.

[11] Tyler v. Judges Court of Registration, 175 Mass. 71, 55 N. E. 812, 51 L.R.A. 433.

[12] Lyons v. Boston & L. R. Co. 181 Mass. 551, 64 N. E. 404.

[13] Sprague v. Dorr, 185 Mass. 10, 69 N. E. 344.

[14] John P. Squire & Co. v. Tellier, 185 Mass. 18, 102 Am. St. Rep. 322, 69 N. E. 312; Com. v. Strauss, 191 Mass. 545, 78 N. E. 136, 6 Ann. Cas. 842, 11 L.R.A.(N.S.) 968.

[15] Otis Co. v. Ludlow Mfg. Co. 186 Mass. 89, 104 Am. St. Rep. 563, 70 N. E. 1009.

[16] New York L. Ins. Co. v. Hardison, 199 Mass. 190, 127 Am. St. Rep. 478, 85 N. E. 410; Com. v. Nutting, 175 Mass. 154, 78 Am. St. Rep. 483, 55 N. E. 895, affirmed in 183 U. S. 553, 46 L. ed. 324, 22 Sup. Ct. Rep. 238.

[17] Com. v. Wheeler, 205 Mass. 384, 137 Am. St. Rep. 456, 91 N. E. 415, 18 Ann. Cas. 319.

[18] Com. v. Huntley, 156 Mass. 236, 30 N. E. 1127, 15 L.R.A. 839, affirmed in 155 U. S. 461, 39 L. ed. 223, 5 Inters. Com. Rep. 590, 15 Sup. Ct. Rep. 154.

[19] Com. v. Danziger, 176 Mass. 290, 57 N. E. 461.

Compulsory Workmen's Compensation Laws

BY LEWIS C. WILLIAMS

of The Richmond (Va.) Bar

AFTER a period of investigation and education, workmen's compensation laws have received such general approval in this country within the last few years that about two thirds of all the states have such laws in force. The desirability of such legislation seems no longer to be brought in question; and if anyone doubts the failure of the old laws affecting the employers' liability, a study of the reports of the New York Commission appointed to investigate this subject, and of the joint commission of the National Civic Federation and the American Federation of Labor, will be convincing.

The question now is not whether a workmen's compensation law should be adopted, but what is the best law to be adopted. In most of the essential features the laws approach uniformity, and present in the main little difficulty. There are, however, two particulars, in which such laws differ, which, in the opinion of many, go far toward perfecting or impairing the efficient working of the laws, and have to do with their operation, rather than with the laws themselves.

These are, first, Shall the law be compulsory or elective? second, Shall provision be made for state insurance or for insurance by private companies? Most of the discussion at this time is directed to these two points, I shall attempt to discuss only the first.

While some of the states have adopted compulsory laws and some have adopted elective laws, opinion seems overwhelmingly in favor of the compulsory laws. Compulsory laws are aimed at by all of the states, and it is conceded that every law should be compulsory. But because of constitutional restrictions, only about eight states have compulsory laws. It is to be noted, however, that the percentage of compulsory laws is increasing and the progress of such legislation is indicative of the fact that there is a great public need for such laws, and that they are, to use the language of Mr. Justice Holmes (Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487, 32 L.R.A.(N.S.) 1062), "immediately necessary to the public welfare." This public need presents a strong argument in favor of their constitutionality under the police power of the state as laid down in the case just referred to, as well as upon other and very strong considerations.

The Massachusetts Industrial Accident Board, in its report for the year 1913, says: "It has become evident, that as a matter of justice and public welfare, compensation acts should be uniform and compulsory and apply to all employees and occupations alike. For about one quarter of the employees and their families in Massachusetts to be left practically unprotected from evils consequent upon occupational injuries is unsatisfactory as a permanent condition. The reason for making such laws elective in form, as has been done in most of the states which have adopted them, is to avoid possible constitutional objections. The elective method makes a needlessly complicated and cumbersome legal and administrative enforcement of the act."

The scope of this paper does not permit me to point out wherein the old system of laws was inadequate, and their failure is no longer to be regarded as

open to debate. Not infrequently we now see in judicial opinions and other writings on the subject the old laws referred to simply as inadequate and unfair, and it is predicted that in a few years we will hear nothing more of relation of master and servant in personal injury cases, the principles applicable thereto having become unsuited to present industrial relations, and preventing co-operation between employer and employee. Notwithstanding the acceptance of the dogmatic statement that such old negligence laws have been proved a failure, nevertheless in any evolution in the law-making, causes or reasons for the changes that may be taking place should not be lost sight of entirely, to the end that the reforms may be more effectively accomplished. Then, too, on the question of whether these laws should be compulsory or elective, the welfare of the employees, which is the primary object of the law, should be the first consideration. And upon such an hypothesis the constitutional question can be the more readily answered. These laws are likely to be sustained as constitutional on the ground that they are within the legitimate exercise of the police power; and because the failure of old laws to afford relief to the injured workman has occasioned his seeking a remedy for his troubles and the evils that are incident thereto, the remedy may well be said to be a matter of public concern and come under the police power.

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Briefly considered, it can be said that a fair familiarity with industrial accidents will convince anyone that the old system is unfair and unsatisfactory, wasteful, as well as uncertain, and unsystematic in practice. The practical result, under the old system, is a gamble as to what compensation, if any, will be paid, to the injured employee. Accidents to employees are far too frequent, occur without fault of the employer, and perhaps in spite of his precautions. In short, industrial accidents occur without fault on anyone's part and many are attributable to nobody's negligence, but are classified as trade risks, and as not due to negligence of either employer or employee. Some statistical tables fix the percentage of accidents due to nobody's negligence, but to trade risks, as high as 70 per cent. It would not be extravagant to say that with the old defense of negligence of fellow servants, defense of assumed risk, and defense of contributory negligence, any investigator of industrial accidents would be safe in guessing that in 90 per cent there was no negligence upon which the employer's liability could be predicated and a recovery justified. We may thus dispose of the question of negligence, and assume that the employees under the old system will receive little or nothing, but we cannot escape the fact that accidents will continue to occur with striking regularity, and that the employee cannot escape the pain and suffering, and, often more than the pain and suffering, in that he loses the means of a livelihood and support for himself and those dependent upon him, and as often may become a burden to himself, to his

family, and to the community. Does not this fact make it proper that the legislatures, for the good of the public, place this burden where by proper distribution it falls,—upon the business, as it were, by a sort of implied contract that the employer, recognizing the risks necessary to his business, assumes the burden of compensating therefor on a fixed basis, with a view to relieving the public of its burdens, and promoting the general welfare of the employee and of the community? Further compensation laws are and should be approved, seeing that the work must be done, and that the greater part of the injuries happen without the fault of the workman. If he were injured only through his own negligence or the negligence of his employers, no demand for compensation laws would exist, but it is because the larger part of his misfortunes happen without fault, and because in the division of labor we all share in the fruits of his labor, that in answer to a great public demand, in which demand the employers as well as employees join, the legislatures are passing these laws, and the courts are declaring them constitutional.

This demand involves the public welfare and safety, as well as the economic interest of the public; and on the theory that the safety and welfare of the people will be promoted, and that economic interest demands it, the police power may be exercised, and a compulsory law upheld as constitutional.

The Supreme Court of the United States has not yet passed upon the constitutionality of compulsory compensation laws, but there is no reason to expect an adverse decision, based upon previous decisions of that court and the expressions of the best legal opinion in this country, and upon the decisions of the highest courts of the states upholding such laws. Naturally, when such legislation in this country was in its incipiency there was some hesitation on this subject, but now the demand for such legislation seems so general that only a few states are without compensation laws; and with these agitating it, the doubt as to the constitutional question diminishes, and the universality of the laws themselves expresses the "strong and preponderant opinion" that they are "greatly and immediately necessary to the public welfare,"—to refer to Noble State Bank v. Haskell again.

When we reflect that an evil was known to exist, that about thirty commissions were appointed to investigate the existing conditions and to seek a remedy, and then all the commissions and all the states where the subject was agitated approved the same general plan for meeting such conditions, not forgetting that forty-one foreign countries (comprising all European countries except Turkey, and including Japan, Peru, Venezuela, and a part of Mexico) have such laws, it is difficult to imagine a stronger case for the exercise of the police power, described by Mr. Justice Holmes thus: "The police power extends to all the great public needs. It may be put forth in and of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

Independent of such reasoning, these laws seem to be within the now established lines of the police power, of which it is said (Noble State Bank v. Haskell): "With regard to the police power, as elsewhere in the laws, lines are pricked out by the gradual approach and contact of decisions on the opposing sides." Among such decisions are Missouri P. R. Co. v. Mackey, 127 U. S. 205, 32 L. ed. 107, 8 Sup. Ct. Rep. 1161; St. Louis & S. F. R. Co. v. Mathews, 165 U. S. 1, 41 L. ed. 611, 17 Sup. Ct. Rep. 243; Employers' Liability Cases (Howard v. Illinois C. R. Co.) 207 U. S. 463, 52 L. ed. 297, 28 Sup. Ct. Rep. 141, frequently referred to in the cases involving the constitutionality of compensation laws.

The leading adverse decision so far is that of the New York court of appeals in Ives v. South Buffalo R. Co. 201 N. Y. 271, 94 N. E. 431, Ann. Cas. 1912B, 156, 1 N. C. C. A. 517, 34 L.R.A. (N.S.) 162, but it has been subjected to much criticism, and has not been followed by other courts. Then, too, in its opinion the New York court, after discussing the Constitution of the United States, as well as that of New York, in

the concluding paragraph of its opinion falls back apparently on the fact that the law was contrary to the Constitution of the state of New York.

A different conclusion was reached by the Washington supreme court in State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 186, 117 Pac. 1101, 2 N. C. C. A. 823, 3 N. C. C. A. 599, 37 L.R.A.(N.S.) 466; and in Cunningham v. Northwestern Improv. Co. 44 Mont. 180, 119 Pac. 562, on the ground that such compulsory laws were within the legitimate exercise of the police power by the legislature. The Washington statute was also declared constitutional in Stoll v. Pacific Coast S. S. Co. 205 Fed. 169. Elective laws have been held constitutional in Wisconsin, Ohio, Massachusetts, New Jersey, Minnesota, and Tennessee.

The Ohio statute was before the Supreme Court of the United States in Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 59 L. ed. —, 35 Sup. Ct. Rep. 167, decided in January, 1915. This case arose before the Ohio law was made compulsory by an amendment. But this case is interesting as determining the lines within which the constitutionality of these statutes is being gradually developed and established. The main question submitted was: Were employers of five men or more, who failed to come under the statute by complying with it, arbitrarily discriminated against because of the provision of depriving them of the usual defenses, while those employing four men or less might avail themselves of such defenses? and the court held that the law in this respect was not unconstitutional.

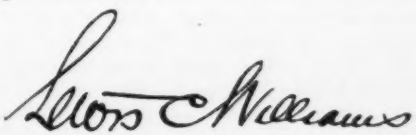
It is interesting to note that Mr. Justice Day in delivering this opinion described this law thus: "It is one of the laws which has become more or less common in the states, and aims to substitute a method of compensation by means of investigation and hearing before a board, for what was regarded as an unfair and inadequate system, based upon statutes or the common law." Thus the beneficent purpose of the law was recognized, and furnishes a guide to its interpretation.

The purpose of such acts is well set forth in Young v. Duncan, 218 Mass. 346, 106 N. E. 1, where the constitutionality of the Massachusetts law was passed on a second time, the court saying:

"The purpose of this act has been stated several times. Briefly, it was to substitute a method of accident insurance in place of the common-law rights and liabilities, for substantially all employees except domestic servants, farm laborers, and masters of and seamen on vessels engaged in interstate or foreign commerce, and those subject to the Federal employers' liability act. It was a humanitarian measure enacted in response to a strong public sentiment that the remedies afforded by actions of tort at common law and under the employer's liability act had failed to accomplish that measure of protection against injuries and of relief in case of accident which it was believed should be afforded to the workman. To the same effect is Hawkins v. Bleakley, 220 Fed. 378.

Thus it is recognized by the courts that these laws are adopted for the purpose of affording protection against injuries, in that compulsory compensation excites interest in prevention, and for relief in case of accident, which comprehends preventing the injured workmen and their families from becoming impoverished and charges upon the community, in which the old laws admittedly failed. Such considerations under the police power are held to justify factory regulation and safety appliance laws, and so are potent in supporting the constitutionality of a law which achieves the same result by a different method.

It is not intended to contend here that the mere enactment of law by all of the states would be sufficient to establish the constitutionality of a law under the Federal Constitution, but it is true, where such laws are to be attributed to such a popular demand, based upon the reasons herein set forth, that then general action by the legislatures evidences the opinion by the public of their necessity to the general welfare.



The Compensation Factor in Accident Reduction

BY LUCIAN W. CHANEY

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Author of "Accidents and Accident Prevention," etc.

COMPENSATION is primarily a remedial measure. It is well worth while to consider it from another point of view. The compensation movement is so recent that its fundamental ideas need reaffirmation from time to time, since even its advocates are not always clearly aware of the reasons for the faith that is in them.

Briefly then to recapitulate, we have for many years treated industrial injury cases on the basis of liability. If either party to an operation which resulted in injury could be shown to be in fault, the faulty party must bear the penalty. The workman found blameworthy must meet the expense of medical and surgical care and the loss of wages, in addition to the physical suffering resultant from his injury. The employer adjudged responsible might be penalized by damages of varying and uncertain amounts.

Three doctrines concerning the workman gradually became established. These are the "contributory negligence," "assumption of risk," and "fellow servant" doctrines. The first of these was to the effect that an injured man was debarred from recovery if his own negligence had contributed in any degree to his injury; according to the second, his continued occupation in conditions known to him to be dangerous was in itself an assumption on his part of the risk involved; the third relieved the employer from liability if the act of some other workman contributed in any degree to the accident.

The application of these doctrines developed many serious abuses not necessary to discuss at this time. Of these results none was more serious than the antagonisms developed between employer and employed which tended constantly to divert attention from the important question of the reduction of accidents.

Gradually as the experience of European countries became known to us, and here and there careful study began to be given the accident problem, the conviction took root that there was a fundamental error in our view of accidents. A very great number of them appeared to be chargeable to the fault of neither party. In others the element of industrial hazard evidently entered in spite of the fact that human fallibility was a large factor.

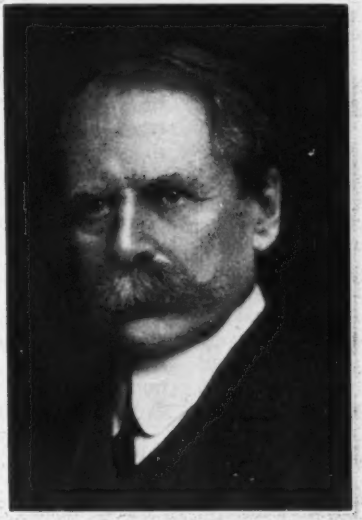
This growth of the idea that industrial injury should be treated like other manufacturing costs, and carried primarily by the industry; secondarily by society, which uses the product,—has developed within a very few years an entirely new system of laws and procedures which now cover practically every important industry.

It becomes a question of no small importance what influence the establishment of the compensation system is likely to have upon the frequency and severity of accidents.

There are not wanting critics of the older compensation laws who have urged that, on this point and others, these laws as existing in Europe have failed, or operated to produce worse conditions. It should be admitted at once that possibilities exist in human nature which would be unfavorably stimulated by the operation of such laws.

There have come under the writer's notice cases where entire groups of workingmen have been led by faulty laws into practices regarding them which cannot be justified.

The writer, in a volume on the iron and steel[1] industry, set down as essential to an effective system for the reduction of accidents the following items: 1. Safeguarding by signs, warnings, and mechanical contrivances. 2. Adequate safety inspection. 3. Safety committees of superintendents and foremen. 4. Safety committees of workmen. 5. Emergency and hospital care of the injured. 6. A compensation system. 7. Retirement pensions. These elements seem to be as necessary after some years of experience and observation as when they were formulated in the early stages of the movement.



LUCIAN W. CHANEY

The importance of the compensation system in this scheme is the matter of our present concern. The theoretical grounds for its inclusion may first be stated.

A necessity for the success of any plan relating to business activity is that it should automatically assert itself in the regular course of business. Any enterprise which is or becomes a side issue stands small chance of becoming an important permanent part of a business undertaking. Thus, when initiative regarding improved working conditions was left either to workmen's organizations, pressure from insurance companies, or state factory inspection, progress was very slow. These agencies are all important and have contributed very materially, but their influence was necessarily spasmodic and intermittent. It did not appear automatically at frequent intervals in the course of business. This is one great advantage of the compensation system as a factor toward accident reduction. It exerts a constant economic pressure. Under the systems adopted in most states it is a very small establishment indeed that does not have reminders at sufficiently frequent intervals to keep attention focused. Since most of the laws require adequate medical and surgical attention in cases of insufficient duration to call for other compensation, the employer must perforce consider the situation at frequent intervals. The arrival of the surgeon's account punctuates this consideration.

Not less important than the reminder to the employer is the reminder to the men. Under the old system the whole tendency was to force the men into a sort of fatalistic attitude toward accidents. The chances of legal recovery were so small that many men simply accepted the situation and forgot the matter as speedily as possible. Since verdicts of excessive and destructive size would, from time to time, be returned, employers were practically compelled to fight all cases either directly or through an insurance company. As a result the men and their employers both viewed a particular accident not with regard to

[1] Conditions of Employment in the Iron and Steel Industry, Vol. IV, Accidents and Accident Prevention.

possible prevention of similar occurrences, but with a view to discovering something useful as a means either of attack or defense. Under such circumstances it was inevitable that no coherent attention was given to means and methods of accident prevention.

It may be repeated, therefore, for due emphasis that compensation is an essential factor in any scheme of accident reduction effort, because of its steady and relentless application of economic pressure.

The fact has now been presented separately for the classes involved, that the accident problem must be frequently brought to attention if it is to be successfully attacked.

In accomplishing this arousing of interest it effectively promotes mutual understanding and co-operation. The operation of the compensation system when it is not unduly monopolized by the state is constantly bringing into personal relations the employer and the employed. The antagonisms of the old system and their lawful results have already been mentioned. It is, of course, possible to administer a compensation plan so tactlessly as to defeat its possibilities for promoting harmonious relations. An employer who permits it to be so administered is missing a great opportunity, and richly deserves the inevitable results.

These theoretical grounds for regarding the compensation factor as highly important in the effort to reduce accidents might be amplified in several directions. The final test, however, of all ideas must be in the realm of practical application. Theory is sometimes unjustly condemned because the results of experience seem to contradict it. Results not in apparent accord with the ideas set forth above do not necessarily mean that compensation does not have exactly the tendency specified. It may mean that the real effect of compensation is masked by the effect of other factors. Nothing is more difficult than the separation of one factor of a complex situation and the determination of its specific effect. Therefore in what follows too much stress must not be given to the interpretation of the facts presented. The writer freely acknowledges that his estimate of the practical situation is not based upon a sufficient body of data to claim authority. An interpretative opinion is offered, whose value depends largely on the soundness of the writer's judgment.

Prior to the enactment of any compensation laws, two large corporations were conducting important experiments in compensation,—the United States Steel Corporation and the International Harvester Company.

Since the writer's studies of accidents have largely been made in the iron and steel industry, it will naturally furnish the most readily available illustrations.

A careful study of the epochs of the effort at accident prevention cannot yet be made. Two well-defined periods will undoubtedly become evident when the facts are finally assembled, which may be termed the precompensation period and the compensation period. The dividing point will be the year 1910, in May, of which year the steel corporation put into effect its relief plan, fundamentally a plan of compensation.

There are two ways of attempting to decide the value of the compensation factor. We may compare progress before the adoption of the plan and after it was put in effect. For example, one of the charts exhibited by the United States Bureau of Labor Statistics at the Panama Pacific Exposition presents the experience of a steel plant for seven years,—three before, and three after, 1910. The rate of 1910 is 77 per cent of that of 1907, while the rate of 1913 is but 35 per cent of that of 1910. Evidently the period following 1910 was more successful in its accident reduction effort. The presence of a compensation factor is one of the differences between the two periods. If it were the only difference the conclusion regarding its importance could be regarded as established. Such a simplicity of condition is very rare, although rather frequently assumed, and the natural conclusion drawn. In the particular instance cited other factors are known to be present, of whose importance no exact estimate is now possible. Such a case is therefore only suggestive. On theoretical

grounds, compensation might be expected to favor accident reduction. The facts cited do not contradict, but rather favor, the idea of its value.

The second way of attempting to evaluate the compensation factor is the comparison of the experience of concerns operating under compensation with that of others using similar methods in other respects, but not having compensation.

In this particular only general statements can be made, in view of the fact that specific figures are not available. So far as the writer has been able to observe, those concerns which have adopted the other items of the scheme outlined in the earlier part of the paper, without including compensation, have been less successful than those which supplemented the other means by a compensation system. It must be again admitted that possibly other differences whose existence may not be evident, or of whose importance we have no proper measure underlie these results. Their constancy, however, suggests that the one factor which is fairly constant, namely, presence or absence of compensation, must be of prime importance.

It will be agreed without debate that the most valuable service which this whole movement can render is in the prevention of preventable accidents. It cannot be accomplished without a more careful study than has hitherto been made of the most valuable of all the instruments of production; namely, the man who works. There must be applied all the expert knowledge of the engineer, the surgeon, and the captain of industry. The lawmaker must contribute, and the executive exercise his power.

If the importance of the factor discussed in this paper has not been exaggerated, it becomes of the highest concern to the community that adequate laws be enacted and the best executive machinery installed.

Lucian W. Chaney

Museums of Safety and Institutes of Industrial Hygiene

In matters affecting the avocations of daily life, theoretical instruction is rarely efficient. "Seeing is believing" for the rank and file. Acting on that principle, Amsterdam, Barcelona, Berlin, Brussels, Budapest, Copenhagen, Dresden, Frankfort on the Main, Gratz, Helsingfors, Munich, Odessa, Paris, St. Petersburg, Stockholm, Wurtzburg, and Zurich have erected museums of safety, in which are exhibited, at rest or in motion, every type of dangerous machinery and its scientific guard; systems of exhaust ventilation for the control of dangerous dusts and fumes; types of respirators, masks, goggles, and special suits for dangerous work; devices to lessen excessive glare and heat; and, in brief, safety appliances for every type of mechanical or industrial processes.

Valuable as has been the work of the foreign museum of safety, the Institutes of Industrial Hygiene in Vienna, Paris, and Milan are demonstrating yet wider fields for the student of human conservation.

The subtler dangers to the worker involved in exposure to dust and fume, to overstrain, overspeeding, nerve exhaustion, occupational intemperance, and the thousand signals to insanitary conditions, are here studied and their remedies weighed and approved. Milan devotes three large four-story buildings, equipped with the latest apparatus in laboratories, hospital wards, lecture rooms, and libraries, to the elimination of those diseases peculiar to employments. Twelve scientists co-operate with the director in the investigation of trade poisonings, such as those of lead, mercury, and arsenic. The toxin of fatigue, of muscular effort, and nerve depletion, are proved by experiments upon living animals. Every trade process offering risk to health is investigated with a view to scientific alterations which shall protect the worker without undue hardship to the employer.

All the information acquired by the laboratory is free to those who seek its aid. And in this case, as in that of the museum, the fact that it is national makes it a force throughout the land.—Hon. Robert G. Brenner.

The Argument for Workmen s Compensation

The Colorado Industrial and Compensation Laws

BY WAYNE C. WILLIAMS

Member of the Industrial Commission of Colorado

WHILE not wholly unsatisfactory, the lawsuit method of securing damages for injured workmen may, for all practical purposes, be called a failure. The lawsuit method of securing damages is the old common-law method that has been in force, in one form or another, throughout most of the period that the common law has been in force throughout the English speaking countries. The common-law rule of damages which were secured through lawsuits based upon the fault of the employer has been the rule for centuries under which workmen have labored. It has been added to from time to time by judicial construction, and gradually the employer has secured a set of defenses under it, which have made the law largely a failure, so far as paying the workmen for the hazards of industry is concerned.

These three defenses, assumption of risk, act of fellow servant, and contributory negligence, have operated against the laborer, representing as they do, those harsh, cruel doctrines of the common law which made it difficult for the laborer to recover.

But this system of compensation could not last. Society is on the march; particularly that phase of society represented by industry. The evolution of industry in the last one hundred years is the most striking fact in the growth of the race. The factory system sprang up in England about one hundred years ago, and with the coming of the factory system is was inevitable that the lawsuit method of securing damages must fail. This is true for several reasons: First, because the lawsuit method is unsatisfactory in that so few recover. Second, because there are also the long delays of litigation and its costs. Only about one half of the suits brought ever result in any recovery, and less than one third of the suits brought (when death occurs) ever bring a verdict of over $500. Only about thirteen per cent of the injuries that occur in industry are ever compensated through lawsuits, from 50 per cent to 80 per cent receive nothing whatsoever.

The other reason why lawsuits fail is because they array employer and employee against each other, and inject the interest of a third party, to wit, the attorney usually working on a contingent fee, and whose interest may not always accord with his clients. It is contrary to the new spirit of society. It is being pushed aside by the advancement of humanity, and by the higher standards of co-operation that all men and women are now coming to see to be vital to the welfare of society.

When we reflect that under the lawsuit method the laborer can be compensated for only those injuries that occur through the fault of the employer, and wholly without fault of his own, and when we reflect, further, that over one half of the injuries in industry are unavoidable, then we see what a tremendous burden the laboring men and women of this country have been carrying, and how utterly inadequate the lawsuit method is; for lawsuits cannot give

damages where the accident is unavoidable and the employer is not at all at fault, or even where the employer is at fault, if there be any fault on the employee's part.

The statistics of various countries on what per cent of industrial accidents are unavoidable are impressive. Statistics in Austria are declared to be the most accurate of any country, and they show 70 per cent of the injuries of industry are unavoidable. The Germans show 42 per cent to be unavoidable, and the United States (so far as compiled) show 50 per cent. It is computed that something over 35,000 deaths occur every year from the hazards of industry in the world, and that the total number of accidents which should be compensated for are over 1,000,000 per year. These figures are startling. The more we reflect upon these facts the more clearly we see the utter unfitness of the lawsuit method of caring for injured workmen and their families. The more we reflect, the more clearly we see it to be the duty of society and the state to provide a system of compensation in which every injury will be paid for, and to provide enough money so that in case the injured workman dies, his family will have enough to keep the wolf from the door; his children may be educated, and not grow up to poverty and crime; his widow may have a competence for declining years.

WAYNE C. WILLIAMS

It is not surprising that twenty-one of the countries of the world have abandoned the lawsuit method for the system of workmen's compensation, and that twenty-six states out of the forty-eight states of this Union have abandoned the lawsuit method for the system of workmen's compensation. Society is on the march; the evolution in industry and the advance of society ideals are setting newer and higher standards. The state of Colorado is in line with this new thought, and this state will never go back to the old common law system of lawsuits, but will adhere to its newly adopted system of compensation, with such changes from time to time as experience may suggest. The various systems of workmen's compensation in the countries of the world, and in the states of this Union, differ in minor details, but they all embody two or three fundamental principles. One, is the abolition of lawsuit method of paying damages; second, is general compensation for all injuries of industry, whenever such injury arises out of the work of industry; third, the establishment of the principle of safety first, and the conservation of human life by the most advanced methods and highest standards of security.

The Colorado law provides for an industrial commission, and gives it general industrial power, such as supervision and management of all labor laws; the power to enforce the adoption of all kinds of safety devices, and the compulsory investigation of all industrial disputes. The other branch of the commission's work is that of administering the system of workmen's compensation. After August 1, 1915, every employer of four or more persons in the state of Colorado

will be obliged to pay compensation unless he elects before that time not to do so. If he elects not to do so, and is sued, the common-law defenses are not available to him. If he elects to pay compensation, then every workman who is injured in his place of business and whose injury was not intentionally inflicted, will secure compensation. Each injured workman may receive one half of his weekly wages, but never more than $8 per week, for as long a period as he is disabled, the compensation extending in some cases to 208 weeks and in cases of total disability to life. In case of death the compensation will range as high as $2,500. Compensation begins on the fourth week after the injury, and before that time the injured workman receives hospital, nurse, medical, and doctor bills.

The employer who elects to pay compensation may insure his risk with the state commission, or with some private company, or if financially able may carry his own risk.

This law means a new step in industrial progress in Colorado. It will be a boon to the working men of the state. It will relieve hundreds and perhaps thousands of cases which have heretofore gone uncompensated; it will bring about a spirit of harmony and co-operation between employer and employee, and tend to relieve the congested condition of our over-burdened court dockets, and relieve employers from the loss of time and heavy expense incident to long and bitter trials. The employer must pay all compensation, and must pay premiums to insure his risk, and ultimately raise the price of his product to do this. Hence, society will eventually bear the burden of the workmen's compensation. But, when the working men and women of the state come to realize that they can be properly compensated for every injury, and that the employer is assuming this additional burden and insuring his risk by paying a premium, they will come to see that the employer is interested in their welfare, and they will likewise have a new interest in the business of the employer and the prosperity of his enterprise.

Any employer of less than four employees, or any employer of domestic or ranch hands, may elect to come under the law by filing a statement to this effect with the commission. It is obvious that with a few rare exceptions, and in cases of very rich employers, the average employer will want to insure his risk. The financial burden upon him would be too great if he had to pay all the compensation out of his own purse or out of the proceeds of the business. Therefore, as we have said, unless an employer have a very large business and be very rich, he will not want to carry his own insurance, but will insure his risk. He can insure this risk either with the state compensation insurance fund or with a private mutual company. By insuring his risk, the employer will pay a relatively small premium, and out of the whole fund produced by many employers paying small premiums to this, the benefits and compensation will be paid. In this way no employer will be too heavily burdened, and the employees of all will be protected.

The employer of four or more persons is automatically under the law on August 1st, unless he elects not to come under it before that date. Whether the employer comes under the act or not, he must post a notice in his place of business, stating such fact. After this notice has been posted seven days, if under the act, his employees are under the act unless they specifically elect to stay out. It is believed that every working man and woman will want to come under the act and receive its benefits. However, an employee may elect to stay out if he so chooses, and if he does stay out and sues his employer, the employer may avail himself of all the common-law defenses in such suit.

Every accident must be reported by the employer within ten days after it happens, and any injured workman must make his claim within thirty days after the accident. After he has made his claim for compensation, the Commission will receive and file the claim, and at the proper time commence paying the disability premiums.

The industrial act gives the commission broad powers in supervising all relations between capital and labor. In a

general way, the commission supervises the enforcement of all labor laws, enforces safety sanitation orders, may compel employers to put on safety devices and obey all laws for the safety of labor. The commission has broad powers in the investigation of industrial disputes. No laboring men can strike, and no employer can lock out his men until the commission has investigated the whole dispute between them and made its findings. The opposing sides may agree in advance to accept the commission as a board of arbitration, or they may agree to accept the award as it is made, in which event it becomes binding. The commission, therefore, has the power of compulsory investigation, but not of compulsory arbitration.

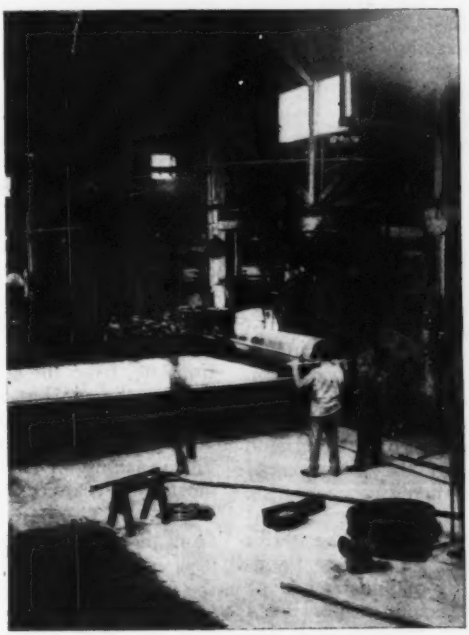
The board may hold investigations and hearings at any time it deems fit and proper, take testimony, and make orders covering any matter within its powers.

This brief summary of the Colorado industrial and compensation law will give a general view of its outlines and indicate the possibilities and aims of the commission in administering this great piece of legislation.

The members of the Colorado commission are E. E. McLaughlin, chairman; Frank P. Lannon, and Wayne C. Williams.

There is a marked spirit of determination to accomplish the full purposes of the act, and to make it effective in the commonwealth of Colorado for the uplift of the workingmen and women and the social advancement of all classes in the state.

Wayne C. Williams



ROLLING SHEETS OF PLATE GLASS
12½ x 21 FT.

Workmen's Compensation in the State of Washington

BY W. V. TANNER

Attorney General of the State of Washington

SOME four years ago, a prominent publicist, after reading the compulsory accident insurance law, then recently passed by the legislature of the state of Washington,[1] remarked that the act might do very well for Washington, but that he would dislike to see it adopted in the state of New York,—in fact, expressed a desire that it be "tried upon the dog."

The state of Washington offered an adequate field for the experiment. The working of giant timber, the building of railroads in a rugged country, through mountain passes and tunnels, the construction of hydro-electric power plants, the dangers incident to terminal enterprises on tidewater, the operation of mines and quarries, furnish a variety of hazardous work and occupations found in few other sections of the United States. The abandonment of the negligence theory, and the substitution of compulsory state insurance, was to upset the habits of employers and employees, lawyers and doctors, an almost revolutionary proceeding.

The time has passed for a discussion of the desirability of the adoption of some form of workmen's compensation as a substitute for the negligence-litigation system. A majority of the states have abandoned the "employers' liability" idea, implying some negligence of the employer, and enacted laws designed to provide a money compensation for work accidents, regardless of questions of fault. And the recognized merit of the compensation system will compel its general adoption.

Workmen's compensation systems may be appropriately classified according to the incidence of liability:

(a) Individual liability.
(b) Collective liability.
(c) State liability.

In acts providing for *individual liability*, the employer is required to compensate workmen for injuries arising out of, and in the course of, their employment, regardless of the question of fault. This is the plan adopted in England.

The *collective liability* system is illustrated by the German law, under which employers and workmen are grouped by industries, and, under state compulsion and supervision, each industry required to provide funds for compensation for injuries occurring in the respective groups.

Under the *state liability* plan, the state assumes the burden of providing compensation for injuries to workmen, levying the cost upon the employers, or upon the employers and employees jointly.

What form of workmen's compensation law, from the standpoint of the employer, the workman, and the state, is most satisfactory? In this aspect it is not inopportune to note the results of the Washington plan as shown by almost four years' experience.

The Washington law differs radically from those adopted in most states. First, it is compulsory, as distinguished from the so-called elective acts; second, it adopts the principle of collective liability;[2] and third, these funds are collected and disbursed by the state industrial in-

[1] Laws 1911, chap. 74.

[2] Forty-seven industrial groups are created by the law, and provision is made for the elective adoption of the law by those engaged

surance department, there being no option to insure in private companies.

The advantage of making compensation laws compulsory, rather than elective, is generally recognized. The adoption of the so-called elective acts in most states was due rather to a doubt as to the validity of the compulsory system than to any advantage inherent in the elective plan. Under the negligence system, even where liability exists, recovery is more a matter of accident than of legal right. The defenses of fellow servant, contributory negligence, and assumption of risk have been refined until they are mere legal niceties. Recovery depends largely upon the court, different rules obtaining in the state and Federal courts; upon the circumstances of location, the law differing in the various states; upon the skill of the legal talent employed; and upon the ability of the workman to obtain the funds necessary to prosecute expensive litigation. The retention of this antiquated system should not be optional with either the employer or the employee. Moreover, since the burden of caring for injured workmen and their widows and orphans must often be borne by public or private charity, the state is directly concerned in the proper distribution of the loss due to personal injuries in industrial occupations. The state of Washington therefore did not err in adopting a compulsory law, unless it be ultimately held that such a law is in violation of the Federal Constitution.[3]

HON. W. V. TANNER

Collective liability is simply another application of the principle of insurance. Only the largest establishments can carry the risk of loss incident to industrial accidents, and common prudence requires that the risk be insured in some form. Shall this insurance be managed by the state, or left to private enterprise under state supervision? At the time of the passage of the Washington law it was decried as an experiment in "state socialism." It was said that politicians would be appointed to administer the law, that their acts would be governed by political expediency, and that the expense would be ruinous to industry. Surely, even a political commission can be relied upon to act with as much fairness toward an injured workman or his dependents as can the adjusters of a private insurer; and if it is suggested that the settlements effected by such adjusters be subject to approval by some public tribunal, as is the case in some states, then the objection of "politics" still obtains. The low cost of administration astonishes even the most ardent advocates of the measure. It is an

in non-hazardous works. By an amendment adopted in 1915, the department is empowered to reclassify or consolidate the groups. (Laws 1915, chap. 188, § 1).

[3] The constitutionality of the law was upheld in State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 117 Pac. 1101, 2 N. C. C. A. 823, 3 N. C. C. A. 599, 37 L.R.A.(N.S.) 466; State v. Mountain Timber Co. 75 Wash. 581, 135 Pac. 645, 4 N. C. C. A. 811, L.R.A. —. The latter case is pending in the United States Supreme Court on writ of error. See also Stoll v. Pacific Coast S. S. Co. 205 Fed. 169.

accepted fact, that of the vast sums collected by employers' liability insurance companies throughout the United States, not to exceed one third actually reaches the injured workman. The other two thirds is consumed in agents' commissions, office administration, adjustment expenses, attorneys' fees, and profits to stockholders. In those states permitting insurance in stock companies, it is estimated that the employer pays two dollars for every one actually paid to the workman as compensation. Under the Washington law one hundred cents of every dollar collected from the employer is paid as compensation for work accidents, the plan as expressed in the law being that the fund "shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration." The cost of administration, including salaries, and traveling, auditing, and office expense, is paid by the state; the employee pays nothing, the employer only his contribution to his class fund. The state can well afford this contribution because of the decreased cost of maintaining its judicial system and the reduction of public charities. During the time the law has been operative, the cost of administration expense has been less than eight cents of every dollar handled.[4] Contrast this ratio of expense with the expenditures of stock insurance companies for the same purpose.

A compensation plan must permit the industry still to prosper. Under the Washington law, the department collects from the employer in each group, as often as may be necessary, money sufficient to pay the employees in that group the compensation provided by law, the contribution being adjusted among the employers upon the basis of payroll. The economy of the state system as compared with those permitting private insurance is fairly illustrated by a table compiled by the United States Department of Labor.[5] The table, which is too long to be set forth in this article, compares the rates as to numerous representative employments in states having the state insurance plan with those prevailing in Illinois, New Jersey, and Wisconsin, which have industrial insurance in private companies under state supervision, and states the charge upon each one hundred dollars of the payroll. Typical illustrations are:

Coal miners:	
Washington	$ 3.00
Illinois	15.00
New Jersey	6.00
Wisconsin	8.40
Saw Mills:	
Washington	$ 2.50
Illinois	5.60
New Jersey	4.50
Wisconsin	6.30
Street railway, electric, not interurban:	
Washington	$ 3.00
Illinois	6.75
New Jersey	5.00
Wisconsin	7.00
Printers:	
Washington	$ 1.50
Illinois	1.55
New Jersey	1.25
Wisconsin	1.75

As is said in the bulletin referred to, it is "evident that the state insurance rates are in almost every instance, and in most cases very strikingly, below the rates charged for compensation insurance by stock companies." The figures as to printers have been given because they bear upon another superiority of the state system. In Washington the industrial insurance department issues calls for premiums only in accordance with the necessity therefor. Hence, although the statute has specified an annual premium for printers of $1.50, a monthly call would be for but one twelfth of that premium, as in this particular industry there has been but one call a year; the premium instead of being $1.50, as appears in the table, has in fact been but one twelfth of that amount, or twelve and one-half cents. Stock companies, on the other hand, collect the entire annual premium regardless of the actual necessity in any year for the amount thus collected. In the case of only two groups

[4] During the period October 1, 1911, to June 30, 1915.

[5] Bulletin of the United States Bureau of Labor Statistics, Whole Number 126, Workman's Insurance and Compensation Series No. 5.

has it been necessary to collect the full statutory rate for any years since the Washington law has been in force.

It may be suggested that the low rate of premiums prevailing in the state of Washington is due to the low scale of payments for accidents. It is true that the scale of this state may appear lower than in the states with which it is compared because the monthly payments to injured workmen or their dependents are less. The conclusion, however, is erroneous for the reason that the period of payment is longer in this state, in many cases being for life, so that the reserve which must be set aside to pay the claims allowed is in fact greater than that necessitated in other states.

The Washington law has proved little, if any, more expensive to the employer, and many times more remunerative to the employee, than the old system. Experience has developed, and will continue to develop, defects in the act, some of which have been corrected by legislative amendment and others are to be corrected in the future. Nevertheless, the accomplishments of the state of Washington merit the careful consideration of all students of the problem of workmen's compensation.

W. V. Tanner

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SCENE AT COKE WORKS

The Assemblies and Courts Of the Vikings

BY J. W. PERKINS

Of the Wahpeton (N. D.) Bar

"Small are sand grains,
Small are drops of water,
Small are men's minds;
For all men
Were not made equally wise."
—Havamal.

TO STUDENTS of the laws of England, the study of the legislative and judicial institutions of ancient Scandinavia, is not only interesting, but instructive. Before the common law came into existence as a system of jurisprudence, the Norsemen had national assemblies or parliaments which enacted laws, and courts which enforced them. The men of the North, long before those of England, grasped the fundamental principle of a system of laws enacted and enforced by the government. As early as the tenth century this foundation stone of government was laid down in Frostathing's Law, chap. 1, § 6, as follows: "With laws shall our land be built, and not be laid waste by lawlessness. But he who will not allow others the laws shall not enjoy them himself."

Who can boast of the laws of England, when this principle was not recognized, or even understood, for at least two centuries later?

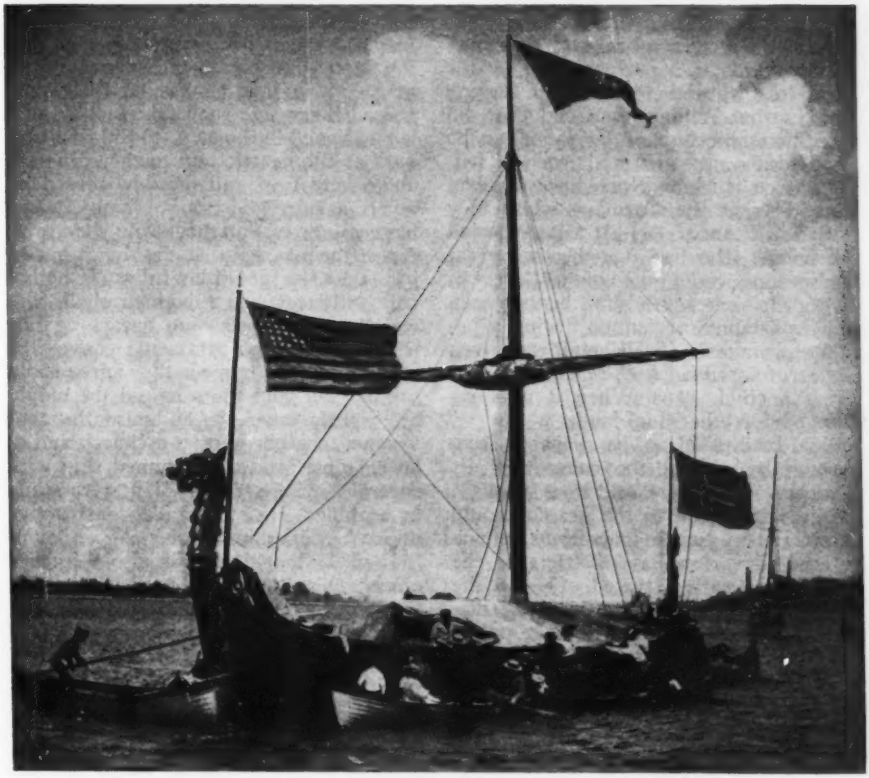
To obtain an adequate understanding of the assemblies and courts of the North of ancient times, which enacted and enforced this legal system, it is first necessary to take a cursory view of the land laws, because those institutions were based upon the land divisions.

In all ages, and among all nonmigratory peoples, land has constituted the wealth of the individual and established his rank among his fellows. What is true to-day was true ten centuries ago in the land of the Vikings. Those people of the North, although warlike and of a roving disposition, were much attached to the country to which they had migrated from the shores of the Black Sea in the second century. After living in the North for over seven centuries, is it any wonder that they evolved a law for the holding and transmission of the land? And be it said to the credit of the Norseman, this law had none of the iniquities of the Feudal System of England.

Let us turn back the pages of history and travel through the Land of the Midnight Sun as it was during the ninth, tenth, and eleventh centuries.

During the early days of colonization a number of families, called a "her" (host), would gather together for mutual protection. The land they would occupy, either peacefully or by force, was called a "herad," that is, the land of the "her." Where several herad were near each other they were collectively called a "fylki." The fylki, therefore, in a general way corresponded to our county, and the herad to the town or township.

The origin of the title to the land thus settled by the her is a little uncertain, but the probability is that the head of the family which migrated to the country



OLD VIKING SHIP

Explorer of northern seas and burial boat of Norse Chief Christiana

took a certain amount of land which he held as "odal," *i. e.*, not dependent upon a superior, the extent depending upon the size or rank of his family. The owner of the odal, that is, the head of the family, was known as a "buandi" or "bondi" (dweller). After a her has thus settled upon the herad by each buandi selecting his odal, no stranger could take land within the boundaries of the herad without lawful right, and could be summarily ousted without legal process. This is one of the few instances where the ancient law of the North allowed individual enforcement of rights.

When a buandi thus settled upon land, the title did not at once become odal in him; that is, he did not have a fee simple title. Not until the same land had descended through four generations in unbroken succession did it become odal. After land had thus vested absolutely, it could be transferred in six different ways: (1) When it was given as "weregild," that is, given as indemnity by the owner for any injury to body or reputation of another; thus buying off the revenge of the injured man, or his family if he were murdered. (2) By "brand-erfd." "The inheritance is called 'brand-erfd' if a man receives another to keep him in bad and good circumstances, and feeds him till fire and pyre [until death]." (Gulathing's Law, 108). This

would be the equivalent of a transfer on consideration of support for life. (3) When land was received as "heidlaun" (fee reward), *i. e.*, when given by the King to a subject for faithful service. This is what William the Conqueror did after his subjection of England, but he imposed upon the gift the burden of feudal service which his Norse ancestors had learned from the Germans when they settled in France. (4) At a later period the Kings, who had now become great landowners, would give land as "drekkulaun" (drink reward), for having been well entertained or nursed during a period of sickness. (5) When it was given as "barnfostrlaun," *i. e.*, reward for fostering a child. (6) When it was exchanged for other odal land.

Odal land could not be alienated from the family without the consent of its members. If it were sold to a stranger, the nearest of kin to the grantor could redeem it on certain conditions, which differed in various law districts of the country (hereafter treated of). In the Gulathing's Law district, the chief district, the next of kin had to make public announcement of his desire to redeem at the thing or assembly of the district in which the land was situate, within twenty years after the sale. Thereupon appraisers were appointed, and the land could then be redeemed by the redemptioner paying four fifths of the appraised value. If, however, the notice was not legally given within the twenty years, the redemptioner had to pay the full appraised value. If no notice was given for sixty years, the title became perfect in the grantee or donee. If odal land was sold to a church, the right of redemption was forfeited after thirty years.

There are families in Norway to-day holding odal land which has been in the family for over a thousand years, because of its inalienable character.

Besides odal land there was "kaup" land, freehold land which could be bought and sold. This was land which was originally settled by the her, and before it had become odal by being in the family the required length of time. The manner of transfer of kaup land was as follows: "If a man buys land in the presence of many men, the thingmen (members of the assembly of the district) shall convey the land to him. He shall summon the other men home, and thence to the thing (assembly), and have witnesses at the thing that he has lawfully summoned them. He shall take mould, as it is mentioned in the laws, to the four corners of the hearth, and to the high-seat, and where field and meadow meet, and where pasture and stone-ridge meet, and have witnesses, and those who were present at their bargain, at the thing that he has taken the mould lawfully. If he has full witnesses, the thingmen shall with weapon-taking (clashing spears against shields as a token of assent) convey the land to him. Wherever they agree about the bargain, and the sale and the mould are rightly taken, it, and also the conveyance, shall be kept at a church and at an alehouse, and at a manned ship with several rowing-seats, as if it were made at a thing" (*i. e.*, to give constructive notice). Gulathing's Law, 292.

It seems that there was also a further ceremony, as appears from the Eyrbyggja Saga, chap. 14 (A. D. 890–1031): "The silver was then all counted, and every penning paid for the land. Börk then took the money, and by a handshaking, transferred the land to Snorri."

Leaseholds also existed, and the lessors were evidently as mercenary as those of to-day. "Thrand leased out the land at Gata (a district) to many, and took as high a rent as possible." Foereyinga Saga, chap. 2 (960–1040.)

Commons existed in Norway just as they did in England, with this exception, they were owned by the herads, instead of by the King. These commons consisted of the large tracts of land and sea owned by no individual, and were called "almenning." Anybody had the right to use the wood and water from the almenning; to build a saeter (chalet); to fish, hunt, and trap; to cut timber and mow grass; in all cases, however, observing the rights of prior users. If the settler desired to retain any part of the almenning, he had to fence it in within twelve months; and if he lived on it continuously during the reigns of three Kings of not less than ten years each, he acquired full kaup title to it. He would also own all land outside his fence as far

as he could throw his knife. All fishing places were almenning, but the King had a right to levy a tax (fish gift) of five fishes upon all who fished there. All wrecks thrown upon land belonged to the owner of the land. If thrown upon almenning, they belonged to the King. These two instances are similar to the royal prerogative of the common law.

When Harald Fairhair became King of Norway (860–930), he attempted to establish feudalism among the liberty-loving vikings. "King Harald became the owner of all odals, and of all the land cultivated and uncultivated (almenning) in every fylki, and even of the sea and the rivers and lakes. All boendr (plural of bondi) were to be his tenants, both those who cultivated the field and the saltmakers; and all fishermen, hunters, and trappers, both on sea and on land, were his men." Egil's Saga, chap. 4, (850–1000).

This usurpation of the rights of private ownership, and the establishment of the Feudal System, fortunately, did not last long, as Hakon the Good son of Harald Fairhair, yielded up to the people their ancient rights, and established new legal relations between the King and people; of which more hereafter. However, this attempt to establish the divine right of Kings had its effect upon a viking of the next generation. Göngu Hrolf (or Rollo), the first jarl (earl) of Normandy, established the institution in that country when it was ceded to him by Charles III. of France in 911. And a descendant of his, William the Bastard, brought it to England in 1066. Thus, while feudalism originated in Germany and thence was introduced into France, it became the foundation of the English common law through the vikings of the North.

Having now a fair understanding of the divisions of the country, let us see how these Norsemen of old enacted laws and judged cases.

While there were many assemblies, the more important went under the name of "thing" (pronounced ting). The lowest thing was the herad-thing, where the boendr (landowners) exercised certain judicial and legislative powers for their herad. This was the ancestor of the hereds-thing, or hundred court, of the present time. When matters concerning a fylki had to be considered, a fylkis-thing was held, which was a gathering of the boendr of all the herads of the fylki, presided over by the hersir, or king. The fylkis-thing had no power to legislate for local matters pertaining to any of the herads comprising the fylki, as that power was vested exclusively in the herad-thing. When national affairs, internal or external, arose, all the boendr of all the herads and fylkis met together at a general thing called the "allsherjar-thing," or "althing" (thing of all the hosts). The decisions of this general or national thing were binding on all the people of the country.

This ancient form of government, with its separate assemblies exercising different degrees of jurisdiction over different districts and subdistricts, has its nearest parallel in the United States.

The herad-thing, being the assembly of the small governmental districts, all the boendr, or landowners, were required to attend its meetings under pain of fine, with the exception of an einvirki (sole worker); that is, where the farm was so small as to be worked by the bondi alone. The einvirki, however, was required to appear at the (1) "konungs-thing," a thing summoned by the King; (2) "manndröps-thing" a thing to try a murderer; (3) "manntals-things," a thing for the equalization of the tax; and (4) "våpna-thing," a thing to examine if every man possessed the weapons prescribed by law. Each member of the thing had an equal vote.

Any bondi could summon a thing whenever he deemed it necessary. He did this by sending out a summons, "thing-bod" (usually a cross after the introduction of Christianity), or, in case of murder or other extraordinary matters, an "ör" (arrow). In Iceland the summons consisted of the "svastica" or "svastika," that curious religious symbol in the shape of a cross and so common among the Aryan races. The summons was sent to every farm in the thing district, and all men had to obey it, except the einvirki, by meeting at the thing-place, usually on the fifth day after the issuance of the summons. If a bondi,

who would otherwise be required to attend the thing, did not wish to do so, he could pay a certain amount of money, rated according to whether it was a herad-thing, a fylki-thing, or althing, to those who did go, and thus relieve himself of any liability.

The thing was held in an open place, called "thingvöll" (thing-plain), and always where there was a "thing-brekka" (thing-hill) from which announcements were made. The thing-plain was a sacred place under the protection of the gods, and he who shed blood during the meeting of the thing became an "útlagi" (outlaw) until he had made reparation for his crime. Likewise the protection of the "grida-setning" (peace declaration) extended over all the boendr on their journey to and from the thing, thus resembling the constitutional provisions found in most of the states exempting legislators from arrest while in attendance upon the legislature.

Every herad-thing was presided over by the three "godis" from the herad. The godi in earliest times was the temple priest and spiritual ruler of the people of his district. From about the time of Harald Fairhair of Norway, however, he began to exercise temporal as well as spiritual power. He became the executive branch of the government, so to speak, as in his hands was placed the execution of the laws among the thingmen of his herad. He also acted as advocate when a thingman of his own district had a case against a thingman of another district. He was, however, subject to the law, and liable to punishment as a bondi was. In fact, it might be said here that no person was above the law.

All matters decided by the thing, whether legislative or judicial, were finally confirmed by "våpnatak" (weapon-taking). This was done by the thingmen taking up their weapons, which they had laid aside, and clashing them together.

While it was usual for all the thingmen to take part in the determination of cases, yet at an early date important cases were decided by twelve learned men. "He (King Heidrek) left off all warfare and made laws in the land; he chose twelve of the wisest men to judge in important cases in his realm, and prevented all warfare in his land; he became a great chief and was well liked." Hervara Saga, chap. 14.

The right of appeal was allowed from the judgments of the herad-thing to the fylki-thing. And if no decision could be had, the case was taken successively to a thing summoned from two, three, four, and eight fylkis. The judgment of a thing from eight fylkis was final.

The judicial portion of the althing, or national assembly was presided over by special judges who sat in an inclosure separated from the rest of the assembly. "The court was held in a level field, and hazel poles were put down in a circle into the ground with ropes around them; these ropes were called "vebönd" (sacred bands). Inside the circle sat the judges, twelve from Firdafylki, twelve from Syngalfylki and twelve from Hördafylki; these thirty-six men were to judge in all cases." Egil's Saga, chap. 57: (850–1,000).

Not until shortly before the introduction of Christianity (about 940), did the people begin to come together into closely-settled districts or towns. When this evolution took place, however, the town-dwellers, living a different life, having different pursuits and owing different duties to their neighbors, needed a special set of laws and a special thing. There gradually grew up a common law of the towns, called the "bjarkeyjar-rétt" —town law—(now called the "by-rett"); and the thing at which this law was administered was called the "mót," and was composed of all the "husfartir" (householders).

There were lesser assemblies for local administration, such as for the prosecutions for violations of local laws, care of the poor, etc.

Until the reign of Håkon the Good of Norway (934–960), the herad-things, the fylkis-things, and althing exercised the legislative power over their respective jurisdictions. But when Hakon's father, Harald Fairhair, became King, he extended the kingly prerogative to such an extent, as above mentioned, that practically all power was taken from the boendr and lodged in him. When the son, Håkon the Good, ascended the throne, he restored to the people their

ancient property and legislative rights which they had enjoyed from time immemorial. He showed his administrative genius by dividing the whole of Norway into four districts for the administration of the law (lög). They were, (1) Frostathing's law district; (2) Eidsifjathing's law district; (3) Borgarthing's law district; and (4) Gulathing's law district. The Gulathing law district had probably existed long before the time of Harald Fairhair.

The "lög" was originally simply the customs of the people handed down from one generation to another, the "common law" of the land. It was the "municipal" law of the vikings; that is, it dealt with the relations between man and man. It thus was regarded as having originated from the people alone, and was, therefore, their inherent right. The King was acknowledged as a part of the government, and hence was amenable to the lög, and was on that account given a voice in making it when new legislation was necessary. Håkon codified the lög for the four law districts established by him. "Håkon was one of the most eloquent, merry, and modest of all men; he was very wise and especially fond of lawmaking. He enacted the Gulathing's law, with the advice of Thorleif the Wise; also the Frostathing's law with the advice of Sigurd jarl and other thrands who were very learned." Fornmanna Sögur, i, p. 31. The Gulathing law at an early date became the most important of all the laws, and is almost completely preserved in writing from the latter part of the twelfth century.

The legislative, or lawmaking, power was transferred by Håkon from the fylkis-things to the newly-created lögthings (law-things). Instead of all the boendr attending the lögthing, representative men, "nefndarmenn," took their place, thus introducing the pure representative form of government. Each of the four districts of Norway had its law-thing, which legislated for it alone.

The althing was still retained for legislative purposes over the entire country. It met every year, on a Tuesday after fifty days of summer had passed, and lasted fourteen days.

When the lögthing was created, to exercise legislative power only, of necessity some other body had to be formed for judicial purposes. So the "lögretta, or law court, was created to have jurisdiction over all legal controversies. The court met on the thing-plain, and was a part of the althing. Its members were composed of three classes,—godis, lawman, and advisers. The godis have been treated of under the discussion of the herad-thing.

The "lawman," "lögmenn," or "lögsögu-man" (law-telling man), held a peculiar position. He was the most influential and powerful man in the district, and greatly respected and loved by the people. In the earliest times his position was hereditary, but later, and especially in Iceland, it was elective. He was elected by the lögretta on the first Friday of the althing, before the cases which were to be tried were made public from the law-hill. This was done by lot, the majority ruling. His duties are thus set forth: "From the law court where the electing takes place the men shall go to the law-hill. The lawman shall go thither and sit in his seat, and seat those whom he wishes on the law-hill, and then the cases are to be brought forward. It is also law that it is the lawman's duty to recite all parts of the law in three summers, and the thing-regulations every summer. The lawman has to recite all declarations of innocence (*i. e.*, of outlawry), if possible, when the greater part of the people are present; also he shall recite the reckoning of seasons; and if people shall come to the althing before ten weeks (fifty days) of summer have passed, and inquire about keeping the emberdays and the beginning of fasts, he shall make known all this at the dissolution of the thing. . . . If he is not wise enough, he shall take counsel with five or more law-skilled men. . . . When the lawman has had the law-telling for three summers, he shall recite the thing-regulations for the first Friday of the fourth summer; then he shall give up office if he likes. If he wishes to keep office, the greater part of the law-court men can again decide." Grågås, i.

Ordinarily the lawman had neither legislative nor judicial power, except in a tie vote in the lögretta, as hereafter

shown. Before the law was reduced to writing he was the expounder of it, a living law book to be used by all who needed advice in the law or customs of the country. His advice was sought not only at the thing, but at his home. "It is the lawman's duty to tell all those who ask him what is law, both at the thing and at home, but not to give advice in a suit." Grågås, i, 4.

From time to time the law which was expounded by the lawman was written down. One of the most noted of these compilations, and from which most of our knowledge of the laws of ancient Norway is taken, was a codification prepared by Magnus the Good, of Norway, who ruled from 1035 to 1047. In the early years of his reign he was very severe towards the boendr, but later became more humane, and then produced his great work, much after the manner Justinian did the Corpus Juris Civilis. "After this the King became milder; also many spoke to him about this. At last he had a talk with the wisest men, and they made laws. Then he had a law book written which is still (about 1250) in Thrândheim, and is called 'Grågås' (the grey goose). He became popular and was liked by all the people of the land, and therefore was called Magnus the Good." Heimskringla, chap. 17. (*Quære,*—Did the study of the law make him good?)

As was the case with the King, the lawman was not above the law, for, "if the lawman commits something which the greater part of the thingman would call thing-breach, then he is liable to lesser outlawry." Grågås, i, 4.

To return to the membership of the Lögretta. The third class, the advisers, will be treated in the following description of the procedure of the court:

Three benches were placed side by side on the thingplain. On the middle bench sat the godis from the entire district, usually forty-eight in number. The lawman also sat with them. Each of the forty-eight godis "has to have two men to give him advice, one in front of himself, and the other behind him; . . . then the benches are fully occupied, with forty-eight men on each bench. No man shall sit inside the benches on the space of the law-court except those who have cases. . . . The people shall sit outside the benches. Only those who have cases have the right to rise in the law-court where laws or licenses are considered. He who rises (without the right to do so) is to be fined three marks, and whoever likes can prosecute him. People who crowd so much to the lögretta purposely, or make so much noise or tumult that cases are disturbed, are liable to lesser outlawry, as in the case of every disturbance at the thing. . . . The law-court shall sit both Drottnisdag (Sundays) of the thing, and the last day of the thing, and always between those days when the lawman or the greater part of the people wish. . . . As soon as the godis get into their seats, each of them shall place a man on the bench before him and another on the bench at his back for advice. Then the men who have cases shall tell what they disagree upon; then they (the godis) shall think on the case until they are decided in their minds on it, and ask all law-court men (godis) who sit on the middle bench to tell what each of them wants in this case according to law. Thereupon each godi shall tell what the laws says and with whom he will go in this case, and the majority shall rule. If an equal number of law-court men on both sides say that two different decisions are lawful, then the decisions of those with whom the lawman sides shall rule. If the others are more they shall rule, and both shall take "véfangreid" (oath of division) to this that they think what they decide in this case is lawful and follow it up because it is law." Grågås, i, 4.

The defendant had the right of a change of venue because of the prejudice of the court, as appears from the following: "The defender in a case can name six judges whom he does not want to judge in his case. They are to rise from the dóm (court), and sit inside the dómhring (sacred precincts) while the case is judged." Grågås, i, p. 78.

There were four ways by which a party to an action could prove his case; namely, oath, witnesses, ordeal, and duel. And let us say here that of the many virtues possessed by the Norsemen, the sanctity

of the oath was the greatest. Many an epic can be, and has been, written of how an oath was kept in spite of the greatest provocations and temptations. Let the men of every land learn and follow this noble trait of the vikings of the North.

Each godi was required, when in attendance upon the thing, to wear on his arm the "stalla-hring" or altar-ring. This was made of pure silver, and was consecrated by being dipped in the blood of a sacrificial ox. "A ring, weighing two aurar or more, was to lie in every head temple on the altar, and every godi was to wear it on his arm at all law-things which he should hold, and to redden it in the blood of the cattle which he himself sacrificed there. Every man who had to perform legal duties there had first to take an oath on this ring and name two or more witnesses, and say: 'I call to witness that I take oath on the ring, a lawful oath, so help me Frey and Njörd and the Almighty As (Odin), to defend or prosecute this case, or give evidence, verdict, or judgment which I know to be most true and right and lawful, and to perform everything as prescribed by law which I may have to perform while I am at this thing.'" Landnåma, iv, chap. 7 (800–1000).

This particular law was in force before the establishment of the lögretta; yet it will be seen that even then both the plaintiff and defendant, as well as the judges and witnesses, had to take this oath. Upon the introduction of Christianity the Bible took the place of the ring. The oath on the Bible is a practice peculiar to people descended from the Norsemen. It will be noticed that the invocation in the form of oath on the ring is quite similar to that used now-a-days.

When a case was tried it was customary to have witnesses, two of whom were freemen of lawful age, to testify under oath. After the plaintiff had given his testimony under oath, supported by that of his witnesses, the defendant attempted to rebut that evidence by his oath or by the ordeal, of which more hereafter. If he took an oath ("dula-reid," oath of denial) he usually produced a number of witnesses or coswearers, the number of whom varied according to the nature of the case. The most solemn oath was that taken by twelve men, called the "tylftareid" (twelve-men oath). There were two forms of this oath. The first was a milder form, taken by the "fangavitni" (witnesses taken at random by the defendant as coswearers). When this form of the tylftareid was used, the party to the action took his oath as to the truth of his case, and then his twelve fangavitni took their oaths, not as to the truth of the facts of the case, but as to the truth of the party's oath. The fangavitni were not, therefore, witnesses to prove the facts of the case by their testimony, but rather men who swore that their party had sworn to the truth.

When a case of murder, or other serious charge, was tried, the stronger form of the tylftareid was used. "Wherever a tylftareid shall be and witnesses are named, then the plaintiff names one half of the witnesses and the defendant the other; and each shall name as his witnesses when the oath is taken twelve of the best haullds (a bondi of the best class) in the fylki, or the best boendr if haullds are not there. Neither foes nor friends shall be named. He shall take two of the twelve as witnesses, then two of his nearest kinsmen; then they are five with himself; and the other seven shall be free men and full-grown, who will be responsible for his words and oaths." Forstathing, iv, 8.

In this form of the oath but four are witnesses, while the other seven (not counting the party) are the coswearers.

For cases of lesser importance, the oath by six men was used, called the "settareid," and that by three men, called the "lyritareid." In each of these cases there were one or more witnesses proper, and the rest were coswearers.

The procedure by coswearers was introduced into England by the Saxons, where it became the "wager of law," and which after long disuse was abolished by 3 & 4 Wm. IV. chap. 42.

If a witness, in the strict sense of the word, could not attend a trial, his deposition would be taken by examination conducted by two men who then gave his testimony under oath at the trial.

Perjury was punished by fine, inabil-

ity thereafter to give evidence, and loss of rétt, or personal rights. This was virtually lesser outlawry, which consisted of confiscation of goods, and possibly loss of certain personal rights; but which could be redeemed by payment of money.

Another method of proof of a party's case was the ordeal. This was always preceded by the oath. Among the various kinds of ordeal was that of going under arches or hoops of sod, usually three in number and of different heights. If the party succeeded in going under them without knocking them down, he was considered to have proved this case. Another method was to place one's hand in boiling water. Still another was to walk on red-hot irons. If no injury resulted, the party was innocent of the charge made against him.

Dueling was practised quite extensively. There was a great deal of ceremony connected with it. It became so popular that professional fighters went around the country picking quarrels on one pretext or another so as to engage wealthy men in duels, and thus claim large indemnities upon defeating them. As a consequence of this condition, dueling was abolished during the latter part of the tenth century.

How many peoples of the world, both civilized and savage, have had, and still have, such ordeals as proof of innocence. Even the common law—that "plan of simplicity and liberty" and "system of freedom," as it was called by the great Commentator, sanctioned such methods of proving a case. But this was not proof, but rather an invocation of Divine favor by means of miracles. Therefore, if the law of the North contained such superstitious elements, we must consider the age in which it was developed.

While the vikings of the North brought terror to many lands because of their savage warfare, nevertheless, be it said to their credit, no better laws were made or enforced for the time and people than theirs. Peace among themselves they strove for, and what words more fittingly show this spirit than the following: "Now let us agree and be at peace, one with the other, in good will, whether we meet on mountain or beach, on ship or snowshoes, on earth or jökul (glacier), on the high sea or on horseback, as if one find his friend on water or his brother on the way; agreeing as well one with another as son with father, or father with son, in all dealings. Now we join our hands together, all of us, and keep this truce, and all words spoken in this pledge of faith witnessed by God and good men, and all who hear my words or are here present." Gretti's Saga, chap. 73.

G. W. Perkins.

Evolution of Procedure

Just as geologists, in perusing the lexicon of the rocks, find, in the reptilian age, long before the coming of man, the story of the fierce saurian monsters which then inhabited the sea and the land, and knew no law, save that of claw and fang, so, in the history of our jurisprudence, lawyers follow the gradual evolution of our procedure, in the continuous "struggle for law" which has lasted through the centuries. From the fearful "Trial by Battle," "Trial by Ordeal," "Compurgation," and "Wager of Law," our present English procedure was evolved. It has been a painful and laborious process of development, and we need to hold fast to what improvements we have made.—Address of Edward J. White, President of Missouri Bar Association.

"The Progress of the Law;" Negligence as an Instance

BY A. A. GRAHAM

Of the Topeka, Kansas, Bar

AS SHOWN by numerous records from the most ancient times to the present, men have been very generally held responsible for the consequences of their acts; so much so that this has always been the general rule; and, so far as governments are concerned, this is still the case; but exceptions have become very numerous in recent years.

The exceptions to the general rule of responsibility for the consequences of human acts have been mostly in favor of the individual, and their beginning within the memory of a few men still living, arising as the consequence of the abrogation of the chattel slavery of personal servitude and the abandonment of serfdom, as respects the cultivation of the soil and the operation of mines.

When all services from the ground on up to the practice of medicine and surgery were performed by serfs and slaves of the lord, the master, without thought of any alternative, accepted full responsibility for his own acts in all matters. This is self-evident from the very nature of the relation then existing. At that time, as between the lords, warfare was the only method for settling controversies.

This, then, being the state of society, full responsibility for all human conduct arose as a natural necessity in support of individual interest, in the enhanced value of the personalty, the slaves, in the product of the soil; for the serf was then, in law, so attached to the estate as to be an appurtenant, and passed, in a change of title, as a part of the realty.

Negligence, as a factor in law, did not arise until the reorganization of society following the abrogation of slavery, the servitude of the masses of the native or white populations in Europe, not so surprisingly long ago, the last, even in England, having been emancipated in 1799, against the "solid vote" of the "lords spiritual" in Parliament,—if I may be allowed this digression.

The fellow servant rule, the law, this court-made law, there then being no statute on the subject, was first announced on principle, there then being no precedent, as stated in the opinion, in England, in 1837, in Priestly v. Fowler, that the master is not responsible for injuries to his servant, caused by the negligence of a fellow servant. This was thirty-eight years after the emancipation of the last serfs in England. Closely following this first case to announce the new rule, we find affirmatory leading cases in both England and the United States, so that in 1848 this doctrine was well established as "common law" over the English-speaking world, thus casting on society at large the burdens naturally and properly belonging to the individual business of the master. This was made law, and called justice.

This doctrine, however, did not remain unshaken for a generation, and, like all doctrines, had to fall before practical requirements. Our legislators, realizing the injuries thus done the laborer, first passed laws changing the fellow servant rule in the more hazardous occupations; later an extension has been made to occupations in general; and now, under our employers' liability and workmen's compensation acts, the master is

practically the insurer of the safety of his servant, thus, in effect, returning to "the good old times" of only about a century ago, when every enterprise had to bear its own burdens.

This cycle, like the diurnal rotation of the earth, society has completed in a very short time, while others I might mention, affecting religion, politics, and the social state, have only described arcs of various and indeterminate lengths since the beginning of history, leaving the reading of the full cycle, like that of our solar system, yet undeterminable.

I am not hinting at something new on negligence; for that law has now been completely written, and will soon stand to future generations as a chapter in scholasticism belonging to the period still to be designated by them "the Middle Ages."

Negligence, as an instance, may stand as a short and appreciable example of "the progress of the law,"—an accompaniment merely of the cycles of society.

Admitted

That brisk young Julius Jay Van Zar
Quite recently had passed the bar;
He knew what jactitation meant,
And all the twists of Shelley's rule;
To him the canons of descent
Were A, B, C,—he was no fool.
Of deodands and heriots
And purpresture and gavelkind
And frankalmoigne, he knew just lots;
He had the details well in mind.
But when I ordered him one day
To draw and file a divorce bill,
He asked me what it ought to say
And where the Circuit Court might be.
And when he had to garnishee
John Jenkin Jones of Oyster Hill
He said the law of garnishment
He knew; but Lord! what should he do?
So now the office boy is sent
When there's a case to hurry through.
Yet Julius Jay was not a fool,
He knew what jactitation meant
And all the twists of Shelley's rule!

Mitchell Dawson

Chicago, Ill.

The Federal Employers' Liability Act

BY HON. WILLIAM W. THORNTON

[Ed. Note.—Mr. Thornton is the author of a treatise on "Federal Employers' Liability and Safety Appliance Acts," and numerous other legal works. A third edition of this valuable book is to be issued in October. This work includes a chapter on the Hours of Labor Act, with appendices of the several statutes, a number of unreported cases of value, diagrams of equipment of cars as provided by the Interstate Commerce Commission, the rules of the Commission adopted by it for such equipment, reports in Congress on the several statutes embraced in the work, and a copy of the Administrative Rulings of the Commission on the Hours of Labor Act.]

APRIL 22, 1908, Congress enacted the statute now usually called "the Federal Employers' Liability Act," which is revolutionary in the law of negligence. It is made applicable to "every common carrier by railroad while engaged in" interstate commerce, or in commerce in the territories or the District of Columbia, or between this and a foreign nation, and provides that it "shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee; for such injury or death resulting, in whole or in part, from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, road bed, works, boats, wharves, or other equipment." [35 Stat. at L. 65. chap. 149, Comp. Stat. 1913, § 8658.]

At least 80 per cent of railroad employees come within the provisions of this statute. And about 600 cases have been decided, construing its provisions. Its great importance is therefore quite apparent.

As is usually the case with legislation of a reformatory character, the railroad companies attacked the validity of the statute, but unsuccessfully,[1] and it is now well settled that the act is valid in all of its phases.[2]

The purpose of Congress, in the enactment of this statute, was to enlarge the liability of interstate carriers,[3] "to adopt a uniform rule operating alike on all employees of railroad companies engaged in interstate commerce. . . . It was designed to make it easier for employees to recover damages for injuries caused by negligence, and not to impose conditions destructive, not of the remedy, but of the right."[4]

The purpose of Congress was also to abolish the rule concerning the nonliability of the master, where the injury was inflicted by the negligence of a fellow servant of the employee; to modify the law of assumption of risk arising from appliances not constructed and maintained in compliance with the requirements of Federal statutes; to modify the

[1] Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.) 223 U. S. 1, 56 L. ed. 327, 32 Sup. Ct. Rep. 169, 1 N. C. C. A. 875, 38 L.R.A.(N.S.) 44, reversing 82 Conn. 373, 73 Atl. 762.

[2] Philadelphia, B. & W. R. Co. v. Schubert, 224 U. S. 603, 56 L. ed. 911, 32 Sup. Ct. Rep. 589, 1 N. C. C. A. 892, affirming 36 App. D. C. 565.

[3] Grow v. Oregon Short Line R. Co. 44 Utah, 160, 138 Pac. 398, Ann. Cas. 1915B, 481.

[4] Burnett v. Atlantic Coast Line R. Co. 163 N. C. 186, 79 S. E. 419.

law of contributory negligence; and to award relief to the injured employee, notwithstanding his negligence had contributed to his injury; to prohibit contracts releasing the railroad carrier from liability because of its own negligence; and "to save a right of action to certain relatives dependent on an employee, wrongfully injured, for the loss and damages resulting to them financially by reason of the wrongful death." [5]

The only remedy that an employee of a railroad company has, who comes within the purview of this statute, for an injury negligently inflicted on him by his employer or one of its servants, is under this statute. He cannot sue under the common law or under a state statute to recover damages.[6] This is true even concerning the distribution among beneficiaries of the amount received;[7] and it is solely by virtue of the provisions of this statute that the administrator of the deceased can recover damages for those who were dependent on the deceased for support.[8]

If there be an instance where a recovery is allowed at common law or under a state statute, but not provided for by this Federal act, then the employee or his administrator is without a remedy. The statute, however, is broad enough to cover every negligent injury to an interstate employee; yet there are instances of state statutes providing that the deceased employee's personal representative may recover damages for beneficiaries not named in this Federal statute. When such is the case, and such beneficiaries are the only ones the deceased left, there can be no recovery, for there is no liability.

The right of action in the employee, or his personal representative, is based upon the negligence of the carrier; and no right of recovery is given for a wilful injury.[9] This is so because of the words of the statute limiting the recovery to where the injury or death is caused by the negligence of the agents or employees of the carrier, or by defects in its cars and appliances due likewise to its negligence. It therefore follows that no action lies under the statute for a wilful injury, for when "wilfulness comes in at the door negligence goes out at the window." [10]

The statute only applies to a "common carrier by railroad while engaged in" interstate commerce, or commerce within the territories, or within the District of Columbia, or with a foreign nation. It therefore does not apply to a railroad which is not a common carrier, such as a logging railroad carrying only its own logs.[11]

If the railroad is not a common carrier, the statute has no application,[12] but it does apply to a common carrier solely devoted to the carriage of interstate freight, or solely devoted to the carriage of interstate passengers.[13]

It does not apply to any common carrier that is not a railroad company.

The statute applies to every common carrier by railroad "while engaging" in interstate commerce. The words, "while engaging," are significant. A railroad may be an interstate road, and yet not all of its transactions of carriage be transactions in interstate commerce. Therefore, if it negligently inflicts an injury on an employee while not engaged in interstate commerce, it is not liable under this Federal act, and the injured employee must seek a remedy under the common law or under a state statute.

[5] Michigan C. R. Co. v. Vreeland, 227 U. S. 59, 57 L. ed. 417, 33 Sup. Ct. Rep. 192, Ann. Cas. 1914C, 176, reversing 189 Fed. 495.

[6] Second Employers' Liability Cases, supra; Seaboard Air Line R. Co. v. Horton, 233 U. S. 492, 58 L. ed. 1062, 34 Sup. Ct. Rep. 635, Ann. Cas. 1915B, 475, L.R.A. 1915C, 1; Taylor v. Taylor, 232 U. S. 363, 58 L. ed. 638, 34 Sup. Ct. Rep. 350, 6 N. C. C. A. 436; Smith v. Camas Prairie R. Co. 216 Fed. 799; Burtnett v. Erie R. Co. 159 App. Div. 712, 144 N. Y. Supp. 969; Vickery v. New London Northern R. Co. 87 Conn. 634, 89 Atl. 277.

[7] Taylor v. Taylor, supra.

[8] St. Louis, I. M. & S. R. Co. v. Craft, 237 U. S. 648, 59 L. ed. —, 35 Sup. Ct. Rep. 704.

[9] Seaboard Air Line R. Co. v. Horton, 233 U. S. 492, 58 L. ed. 1062, 34 Sup. Ct. Rep. 635, Ann. Cas. 1915B, 475, L.R.A.1915C, 1, reversing 162 N. C. 424, 78 S. E. 494; Cincinnati, N. O. & T. P. R. Co. v. Swann, 160 Ky. 458, 169 S. W. 886, L.R.A.1915C, 27.

[10] Cincinnati, N. O. & T. P. R. Co. v. Hill, 161 Ky. 237, 170 S. W. 599.

[11] Bay v. Merrill & R. Lumber Co. 211 Fed. 717, affirmed in 220 Fed. 295; Nordgard v. Marysville & N. R. Co. 218 Fed. 737, affirming 211 Fed. 721.

[12] Shade v. Northern P. R. Co. 206 Fed. 353.

[13] Washington, A. & M. & U. R. Co. v. Downey, 40 App. D. C. 147.

Thus a "cut-off," not yet devoted to interstate traffic, does not come within the provisions of the act,[14] but it does apply to a branch railroad over which interstate traffic is carried.[15]

Any railroad carrying interstate traffic is at the time engaged in interstate commerce. A single article of interstate traffic on board a car in a train brings the entire train within the provisions of the act; and although every article on board a train, and every car in it, be destined from one point to another in the same state, yet if it is necessary, to reach the point of destination, to pass over a state line, and to pass back over it, the whole train is used in interstate commerce, and the employees thereon come within the provisions of the act.[16]

The statute applies to a train of empty cars, [17] or to a train hauling the company's own coal from one state to another,[18] or to interurban or street car crossing a state line.[19]

But where a train of empty cars was hauled by the company from another state to the common point of destination of such cars, and there the train was broken up and a part of them forwarded to other points within the state, while thus being forwarded, it was held they were not cars in interstate commerce.[20]

Nor was a railroad company so engaged where it carried cab passengers from its ferry to a hotel.[21]

But the statute does cover an instance where a railway company overrates a ferry boat in connection with its railroad interstate transportation,[22] but it does not apply if the boat is not used in connection with the railroad.[23]

The employee, to recover damages, must have been injured "while he was employed" by an interstate carrier by railroad in interstate commerce, or commerce within a territory, or within the District of Columbia, or commerce with a foreign nation. If he, at the time of his injury, is not engaged in such commerce, although engaged in other commerce of the carrier, he cannot recover.

In determining what employee is entitled to such, under the statute, the courts have "cut a wide swath." It goes without saying that, if the employee of the carrier is, at the time of his injury, engaged in interstate commerce, then, *ex necessitate,* the carrier at the same time is engaged in that commerce. In this connection it must be borne in mind that the employee may recover for an injury occasioned to him by the negligence, even in part, "of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, tracks, roadbed, works, boats, wharves, or other equipment."

Necessarily, to recover damages, the injured person must be an employee, for so the statute says.[24]

The test is the "nature of the work being done at the time of the injury,"[25] "not what the employee expects to do after the completion of his task." [26]

In another court it was well said: "A

[14] Bravis v. Chicago, M. & St. P. R. Co. 217 Fed. 234.

[15] Smith v. Northern P. R. Co. 79 Wash. 448, 140 Pac. 685, 5 N. C. C. A. 947.

[16] Louisville & N. R. Co. v. Allen, 152 Ky. 145, 153 S. W. 198, 152 Ky. 837, 154 S. W. 371.

[17] North Carolina R. Co. v. Zachary, 232 U. S. 248, 58 L. ed. 591, 34 Sup. Ct. Rep. 305, Ann. Cas. 1914C, 159.

[18] McAdow v. Kansas City Western R. Co. — Mo. App. —, 164 S. W. 188.

[19] South Covington, C. & C. Street R. Co. v. Covington, 235 U. S. 537, 59 L. ed. —, 35 Sup. Ct. Rep. 158, P. U. R. 1915A, 231, reversing 146 Ky. 592, 143 S. W. 28, but not on this point.

[20] Louisville & N. R. Co. v. Strange, 156 Ky. 439, 161 S. W. 239; Pennsylvania R. Co. v. Knox, 218 Fed. 748.

[21] New York ex rel. Pennsylvania R. Co. v. Knight, 192 U. S. 21, 48 L. ed. 325, 24 Sup. Ct. Rep. 202. See Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. 167 U. S. 633, 42 L. ed. 306, 17 Sup. Ct. Rep. 986, affirming 21 C. C. A. 103, 43 U. S. App. 308, 74 Fed. 833, and reversing 4 Inters. Com. Rep. 722, 57 Fed. 1005.

[22] The Passaic, 190 Fed. 644, affirmed in 122 C. C. A. 466, 204 Fed. 266; Erie R. Co. v. Kennedy, 112 C. C. A. 76, 191 Fed. 332.

[23] The Pawnee, 205 Fed. 333.

[24] Robinson v. Baltimore & Ohio R. Co. 237 U. S. 84, 59 L. ed. —, 35 Sup. Ct. Rep. 491; Wagner v. Chicago & A. R. Co. 265 Ill. 245, 106 N. E. 809; Ft. Worth Belt R. Co. v. Perryman, — Tex. Civ. App. —, 158 S. W. 1181.

[25] Illinois C. R. Co. v. Behrens, 233 U. S. 473, 58 L. ed. 1051, 34 Sup. Ct. Rep. 646, Ann. Cas. 1914C, 163.

[26] Shanks v. Delaware, L. & W. R. Co. 163 App. Div. 565, 148 N. Y. Supp. 1034.

test, to decide if an injury to a railroad employee is within the protection of the act, is its effect on the course and current of interstate commerce. Was the employee's relation to traffic so close and direct that his injury tended to stop or delay the movement of a train engaged in interstate commerce? It is on this principle that not only the train crew, but an employee, repairing its track or switch, is under the protection of the act. And as a bridge, if not kept in a suitable condition, may by its defects interrupt commerce, the duty to repair such an instrumentality carries with it the protection of employees so engaged. And one working on a refrigerator car, or at a shop repairing a locomotive that has been in interstate commerce, is held within the statute. But the work of millwrights, installing machine tools in a general repair shop, is not interstate commerce, even if such tools are capable of use in repair of engines and cars. Many incidents of railroading cannot, in any real or substantial sense, be interstate commerce. For greater facility to expedite repairs, a carrier may operate its own foundry and forges, with warehouses to store axles and car wheels. But the labor in setting up and maintaining such a plant is not thereby made commerce. If a car comes to a shop, those who work on the car may be engaged upon an instrumentality of transportation. The shop machines, however, like the supplies within the paint shop, have not reached the connection with the movement of trains required to bring those so engaged under the act. To hold otherwise would extend the provisions of the statute beyond its construction of the Federal courts." [27]

The work in which the employee is engaged at the time he is injured must be so clearly connected with interstate commerce as to be a part of it. The question is: "Was that work being done independently of the interstate commerce in which the defendant was engaged, or was it so closely connected therewith as to be a part of it? Was its performance a matter of indifference, so far as that commerce was concerned, or was it in the nature of a duty resting upon the carrier?" [28]

"All work," it was said in another case, "so closely related to interstate commerce as to be practically inseparable from it, though it permeates at the same time intrastate business, is in reality and legal effect a part of the former." [29]

"Any brief incidental absence from the scene of work, or instrumentality used therein, which is not inconsistent with the employee's duty to his employer, does not, necessarily, preclude his efficiently claiming to be still on duty and engaged in interstate commerce. Neither the period nor nature, nor continuity of service is changed by such a brief stepping aside from or cessation of activity, as that of customarily visiting a wayside place for a lunch, or other legitimate and common means of refreshment, or waiting after one task shall have been done for orders as to the next movement,—the employee all the time being within customary reach for continuance of the day's service, and holding himself in readiness to immediately respond." [30]

An employee engaged in repairing instrumentalities of interstate commerce, is within the shield of the act, although such instrumentalities may be used a part of the time in intrastate commerce, which is the case of repairing a bridge,[31] a railroad track,[32] a side track of a railroad,[33] a car in a switch yard,[34] telegraph lines,[35] installing a block system,[36] repairing a

[27] Ibid.; Illinois C. R. Co. v. Rogers, 221 Fed. 52; Northern P. R. Co. v. Maerkl, 117 C. C. A. 237, 198 Fed. 1.

[28] Pedersen v. Delaware, L. & W. R. Co. 229 U. S. 146, 57 L. ed. 1125, 33 Sup. Ct. Rep. 648, 3 N. C. C. A. 779, Ann. Cas. 1914C, 153, 117 C. C. A. 33, reversing 197 Fed. 537, which affirmed 184 Fed. 737.

[29] Graber v. Duluth, S. S. & A. R. Co. 159 Wis. 414, 150 N. W. 489.

[30] Ibid.

[31] Pedersen v. Delaware, L. & W. R. Co. supra.

[32] Zikos v. Oregon R. & Nav. Co. 179 Fed. 893; Grow v. Oregon Short Line R. Co. 44 Utah, 160, 138 Pac. 398, Ann. Cas. 1915B, 481.

[33] Jones v. Chesapeake & O. R. Co. 149 Ky. 566, 149 S. W. 951.

[34] Johnson v. Great Northern R. Co. 102 C. C. A. 89, 178 Fed. 643.

[35] Deal v. Coal & Coke R. Co. 215 Fed. 285.

[36] Grow v. Oregon Short Line R. Co. supra.

roundhouse,[37] or an engine in a shop, used in interstate commerce.[38]

An employee, going to and returning from work, when carried by the employer, and as a part of his service, is engaged in interstate commerce, when he, at the end of the outward journey, is to work on an instrumentality of such commerce.[39]

So, an engineer, injured while going through a car yard to his work, can recover.[40]

But an employee going after mail for the train crew, though riding on his employer's train, cannot recover.[41]

When the action is by the injured employee, the statute fixes no limit on the amount of damages which he may recover, except that he cannot recover punitive damages. Such damages as he does recover must be actual damages—such damages as will "compensate him for his expense, loss of time, suffering, and diminished earning power."[42]

The negligence of the employee, which even materially contributes to his injury, will not defeat his cause of action; but his damages are diminished in proportion to the amount of negligence attributable to him. Thus if one fourth of all the negligence involved in the case is attributable to him, the amount of the damages he otherwise would recover is reduced one fourth. "It is only when the plaintiff's act is the sole cause—when the defendant's act is no part of the causation—that the defendant is free from liability under the act."[43]

An instruction to the jury that they should "diminish the damages, if any recoverable, awarded to the plaintiff, in proportion to the amount of negligence attributable to him, so that he will not recover full damages, but only the proportional part, bearing the same relation to the full amount as the negligence attributable to the defendant bears to the entire negligence attributable to both," is a correct statement of the law.[44]

But it is error to instruct the jury that, if the plaintiff was guilty of negligence which contributed to his injury, they must diminish the damages in proportion to the amount of negligence attributable to him in producing the injury.[45]

If the employee was negligently injured or killed because of the violation, by his employer, "of any statute enacted for the safety of employees," then the damages cannot be diminished, because his own negligence contributed to his injury or death.[46]

The statutes referred to are Federal statutes, and not state statutes.[47]

Previous to the amendment of 1910 the administrator, in case of the death of the employee, could recover for the beneficiaries only "pecuniary" damages. "Where his injuries prove fatal, either immediately or subsequently, it [§ 1] invests his personal representative, as trustee for designated relatives, with a right to such damages as will compensate the latter for any pecuniary loss which they sustain by the death."[48]

"The cause of action which was cre-

[37] Thomas v. Boston & M. R. Co. 219 Fed. 180.

[38] Winters v. Minneapolis & St. L. R. Co. 126 Minn. 260, 148 N. W. 106.

[39] Lamphere v. Oregon R. & Nav. Co. 116 C. C. A. 156, 196 Fed. 336, 47 L.R.A.(N.S.) 1, reversing 193 Fed. 248; Kern v. Chicago, M. & P. S. R. Co. 201 Fed. 404.

[40] Missouri, K. & T. R. Co. v. Rentz, — Tex. Civ. App. —, 162 S. W. 959; McNamara v. Washington Terminal Co. 37 App. D. C. 384.

[41] Myers v. Norfolk & W. R. Co. 162 N. C. 343, 78 S. E. 280, 48 L.R.A.(N.S.) 987. (In so short an article as this only a few illustrations out of the many can be given.)

[42] Michigan C. R. Co. v. Vreeland, 227 U. S. 59, 57 L. ed. 417, 33 Sup. Ct. Rep. 192, Ann. Cas. 1914C, 176, reversing 189 Fed. 495; Thornbro v. Kansas City, M. & O. R. Co. 91 Kan. 684, 139 Pac. 410.

[43] Grand Trunk Western R. Co. v. Lindsay, 120 C. C. A. 174, 201 Fed. 844, affirmed in 233 U. S. 42, 58 L. ed. 838, 34 Sup. Ct. Rep. 581, Ann. Cas. 1914C, 168.

[44] Cincinnati, N. O. & T. P. R. Co. v. Goode, — Ky. —, 173 S. W. 329; Norfolk & W. R. Co. v. Earnest, 229 U. S. 114, 57 L. ed. 1096, 33 Sup. Ct. Rep. 654, Ann. Cas. 1914C, 172; Chesapeake & O. R. Co. v. Kelly, 160 Ky. 296, 169 S. W. 736.

[45] Nashville, C. & St. L. R. Co. v. Banks, 156 Ky. 609, 161 S. W. 554.

[46] Section 4 of the act.

[47] Seaboard Air Line R. Co. v. Horton, 233 U. S. 492, 58 L. ed. 1062, 34 Sup. Ct. Rep. 635, Ann. Cas. 1915B, 475, L.R.A.1915C, 1.

[48] St. Louis, I. M. & S. R. Co. v. Craft, 237 U. S. 648, 59 L. ed. —, 35 Sup. Ct. Rep. 704, affirming — Ark. —, 171 S. W. 1185, L.R.A 1915—; Michigan C. R. Co. v. Vreeland, 227 U. S. 68, 57 L. ed. 421, 33 Sup. Ct. Rep. 192, Ann. Cas. 1914C, 176.

ated in behalf of the injured employee did not survive his death, nor pass to his representative. But the act, in case of the death of such employee from his injury, creates a new and distinct right of action for the benefit of the dependent relatives named in the statute. The damages recoverable are limited to such loss as results to them because they have been deprived of a reasonable expectation of pecuniary benefits by the wrongful death of the injured employee. The damage is limited strictly to the financial loss thus sustained." [49]

Prior to 1910, whatever cause of action the injured employee had died with him when he died. It did not survive and pass to his personal representative for the benefit of his dependent relatives. The cause of action given such personal representative was "independent of any cause of action which the decedent had," and included "no damages which he might have recovered for his injury if he had survived." It was "one beyond that which the decedent had,—one proceeding on altogether different principles. It is a liability for the loss and damages sustained by the relatives dependent on the decedent. It is therefore a liability for the pecuniary damages resulting to them, and for that only." [50]

But in 1910 Congress added a section to the original act, without in any way in this respect changing the original text of the act, by providing "that any right of action given by this act, to a person suffering injury, shall survive to his or her personal representative, for the benefit of the surviving widow or husband and the children of such employee, and, if none, then of such employee's parents; and, if none, then to the next of kin dependent upon such employee; but in such cases there shall be only one recovery for the same injury."

The Supreme Court has quite recently construed this statute, in this respect, as it now stands. "No changes were made in § 1," said Justice Van Devanter. "It continues, as before, to provide for two distinct rights of action,—one in the injured person, for his personal loss and suffering where the injuries are not immediately fatal, and the other in his personal representative for the pecuniary loss sustained by designated relatives, where the injuries immediately or ultimately result in death. Without abrogating or curtailing either right, the new section provides, in exact words, that the right given to the injured person 'shall survive' to his personal representative 'for the benefit' of the same relatives in whose behalf the other right is given. Brought into the act by way of amendment, this provision expresses the deliberate will of Congress. Its terms are direct, evidently carefully chosen, and should be given effect accordingly. It does not mean that the injured person's right shall survive to his personal representative and yet be unenforceable by the latter, or that the survival shall be for the benefit of the designated relatives and yet be of no avail to them. On the contrary, it means that the right existing in the injured person at his death —a right covering his loss and suffering while he lived, but taking no account of his premature death, or of what he would have earned or accomplished in the natural span of life—shall survive to his personal representative, to the end that it may be enforced and the proceeds paid to the relatives indicated. And when this provision and § 1 are read together, the conclusion is unavoidable that the personal representative is to recover on behalf of the designated beneficiaries, not only such damages as will compensate them for their own pecuniary loss, but also such damages as will be reasonably compensating for the loss and suffering of the injured person while he lived. Although originating in the same wrongful act or neglect, the two claims are quite distinct, no part of either being embraced in the other. One is for the wrong to the injured person, and is confined to his personal loss and suffering before he died; while the other is for the wrong to the beneficiaries, and is confined to their pecuniary loss through his death. One begins where the other ends, and a recovery upon both in the same action is not a double recovery for a

[49] American R. Co. v. Didricksen, 227 U. S. 145, 57 L. ed. 456, 33 Sup. Ct. Rep. 224.
[50] Michigan C. R. Co. v. Vreeland, supra.

single wrong, but a single recovery for a double wrong." [51]

Where, however, there is an instantaneous death, then no cause of action survives. "Such pain and suffering as are substantially contemporaneous with death, or mere incidents to it, as also the short periods of insensibility which sometimes intervene between fatal injuries and death, afford no basis for a separate estimate or award of damages, under statutes like that which is controlling here." [52]

In the amending section, it is provided: "But in such cases there shall be only one recovery for the same injury." In construing this phrase the Supreme Court, reserving the question whether or not the administrator would have a cause of action where the deceased in his lifetime had recovered a judgment for his injuries, although such injury afterward caused his death, added:

"We think this clause, as applied to cases like the present, is not intended to restrict the personal representative to one right to the exclusion of the other, or to require that he make a choice between them, but to limit him to one recovery of damages for both, and so to avoid needless litigation in separate actions of what would better be settled, once for all, in a single action. This view gives full effect to every word in the clause, and ascribes to it a reasonable purpose, without bringing it into conflict with other provisions the terms of which are plain and unequivocal. Had Congress intended that the personal representative should make an election between the two rights of action, and sue on one only, it is not easy to believe that it would have chosen the words in this clause to express that intention." [53]

W. W. Thornton

[51] St. Louis, I. M. & S. R. Co. v. Craft, supra. The statute as amended had been previously so construed in Northern P. R. Co. v. Maerkl, 117 C. C. A. 237, 198 Fed. 1; St. Louis & S. F. R. Co. v. Conarty, 106 Ark. 421, 155 S. W. 93; Cain v. Southern R. Co. 199 Fed. 211; Carolina, C. & O. R. Co. v. Shewalter, 128 Tenn. 363, 161 S. W. 1136, L.R.A.—.

[52] St. Louis, I. M. & S. R. Co. v. Craft, supra.

[53] Ibid.

World Peace

It is already predicated by military experts of the highest authority that the present convulsion, even if not speedily composed, will be the last conflict of arms between civilized nations. If all that is desired is not achieved at once, still great good is done by causing, even for a brief period, the war drums to keep silent and the war columns to mark time. To many minds this talk of peace has always seemed idle. The yawning chasm of war that lies open before them may confirm them in this belief. Nevertheless, if it be true that war cannot be prevented, who can estimate the good that is done, the evil averted, whenever it is checked in its mad career? At any rate, so far as I am concerned, I am willing to continue in line with and follow the leadership of those great lawyers, Lord Russell and Lord Haldane on the other side, and ex-president Taft, Senator Root, and President Wilson on this side, of the Atlantic, who deem it worth while to devote a good part of their valuable lives to this world-wide movement for peace. If but a dream, it at least affords the joy of hope to anxious hearts, and if in God's good time and of His great mercy this dream of great minds becomes a reality, and the long-sought goal is reached, when "Peace on earth and good will toward men" shall be everywhere proclaimed, may we not expect to hear again that "the morning stars sang together and all the sons of God shouted for joy?"—Address of President Samuel Griffin of the Virginia State Bar Association.

Philosophic Essays On Law

BY WILLIAM W. BREWTON

Of the Fort Valley (Ga.) Bar

Eighth Essay: The Science of Jurisprudence

Part Three

[Ed. Note—The relation of case law to statutory law, from the viewpoint of fundamental reason, which was the subject of Mr. Brewton's essay in the July Case and Comment, is here continued. We believe that his treatment of this important and much discussed modern question will be of especial interest to the American Bar.]

URISPRUDENCE, pedantically asserts the critic, is not an exact science. Inasmuch as there is no such thing as an exact science, our critic is correct, — though by advancing such a contenion he is unconsciously exhibiting his own inherent defects, instead of any which may be true of the Law. It has been sought to bring legal science into unfavorable comparison by exhibiting over against it some other branch of learning which is declared to be "exact." It has been argued that a science's efficacy lies in its so-called exactness, which has been understood to mean that the content of such a science coincides with and is borne out by experience. It has been held, and very properly so, that a science's merit depends upon its applicable validity; that the greater the number of instances in which its rules and claims are verified or sanctioned when they are applied in their respective fields of operation, the more valid it is proved to be. In keeping with this contention, the Law has been declared to be in comparatively unfavorable standing as a science; its rules to have very vague and uncertain applications.

However, if he who criticizes the Law desires to show that it is inexact, it is not necessary to compare it with any other science in order to do so. Indeed, the critics have exposed their own superficiality in doing so; for they have never yet proved any other science to be exact. The fact that twice two is four, or that the shortest distance between two points will inevitably fall out to be a straight line, does not demonstrate mathematics to be an exact science. To be sure, it would be an exact science if all its claims were equally as valid as these two; and so would the Law be if all its rules were as universally just (that is to say, valid) as the one that a sheriff shall be charged only with justifiable homicide when he executes capital punishment. But mathematics has rules which are defective, just as the Law has, and which at times fail of valid application. The Law is as axiomatic in some of its rules as mathematics is in some of its rules, though neither can claim that all of its principles are universal. Not all of the original theorems of geometry have held good, and scientists through the ages have been altering and amending various phases of general mathematics. The civil engineer has trigonometry to aid him for approximate results, but it is from the *data* arising from the individual case at hand which brings to him certainty,—*data* often not in the least comprehended in any established science. Mathematical laws have been laid down and followed for a time, only to be finally discarded for their more valid substitutes. Has there ever been a more speculative empirical science than astronomy? Or is any class of men confronted with more reverses than are physicians? But, says the critic, mathematics is valid as far as it goes, and its strict, formal rules are uncontradicted. The author replies that so is the Law, if we remain within an *a priori* realm, as the critic does in bringing forward his science as a model. No demonstration whatsoever is required to prove that twice two is four, or that justice is right. However (whether or not all so-called *a priori* rules of mathematics are correct

does not concern us here), when mathematics lends itself to the service of mankind, embracing within its province the complex, empirical affairs of man, and, after cautiously associating *data* for the composition of rules, endeavors to apply them universally, the contradictions we have mentioned immediately come forward. The reader will not require the author to unnecessarily cite him to the numerous instances of amended mathematics, medicine, astronomy, and even theology, which are so readily accessible to himself. The author need merely mention that such long periods of alteration and change, if we recognize the reasons for them, are enough in themselves to demonstrate that such will ever be the case, and that, instead of being exact, all sciences are imperfect.

The critic is willing for the author to say that his model science is imperfect, but not that it is inexact. But it must be replied that he can no more claim exactness than perfection for his science, if he concedes any of its phases to be defective. The Law would be perfect, too, if we could arbitrarily discard its imperfections. The present writer does not enter into the question of which science is nearest exactitude, and consequently is not claiming the Law to be a more or a less exact science than mathematics or any other model. That is a question which we are not called upon to determine here,—indeed, if it be possible of determination.

The Law, of all sciences, has the most complex and unascertainable scope. If the almost inconceivable universality of its field of operation be considered, wherein lies the impossibility of exactness and perfection is at once observed. We shall not declare whether or not legal *data,* of all scientific subject-matters, is the most difficult of reduction to formal rules. But the difficulty confronting the Law is that condition which makes it unique among all the sciences,—*the problem that it must not only formulate its subject-matter into rules, but must also enforce their application,*—insomuch that the fact that a high degree of complexity must be met by the Law is recognized as inevitable. The numerous distinct and dissimilar departments of the Law become necessary for this reason, and as readily appear inevitable. Jurisprudence is thus a highly differentiated science, for it must add to a broad and comprehensive compendium of principles a scheme of directions for their application, which, in itself, is necessarily complex, taking cognizance, as it must, of arbitrarily complex fabric of human affairs. That Jurisprudence should necessarily be a science within which must arise and flourish applicable *method* is manifest; that it must be adjustable, practicable, and operative is also apparent.

In creating the Law, it is sought to establish, within laws or statutes, all requisite principles and methods of application. But as laws are being applied, it is observed often by those who apply them that the legislator, naturally enough, has failed to indicate a sufficiency justicial means or method; with the result that such a defect must be supplied, as far as possible, by judicial influence and control. Method, in numerous and often unobserved instances, is the achievement of the discretion of courts. This procedure runs throughout all Law in its direction toward its proper ends, and is of universal influence, existing as a necessary result of defective created law. So that legal science comprehends that legal force which is not the work of legislators. It comprehends all that is Law; and we are therefore very properly led to assert that,—

Jurisprudence is a science composed of substantive rules and particular, pertinent determinations. In the former lies the gist of the Law's security; in the latter lies the gist of its efficiency.

The application of ascertained, established scientific principles meets with manifold contradictions. That which is generally valid is not necessarily that which is pertinently so; that is to say, general rules, established even after extended experience calls for and warrants them, must inevitably be confronted by contingencies for which they did not provide. So that, to attain the highest and nearest universal degree of validity, there must exist within a science that capacity of flexibility which permits its cognizance of and application to contingencies. The province of Jurisprudence includes such

provision, and extends, because of the peculiar nature of its subject-matter, to peculiarly pertinent operations. Statutes, or laws, have a limited extent, which is supplemented by determinations suited to single instances to which the laws are created to apply. The latter is no less a part of legal science, the Law, than the former; for both enter themselves into the scheme of systematic administration of justice. The application of created laws involves their supplement, howsoever unnoticeable this may at any time appear. Phases of instances to which a law is to apply are more numerous and complex than phases of the law; for rules cannot be universally comprehensive. So that, howsoever meritorious and efficacious the work of the legislator has been, it yet must necessarily be subject to such addenda and modification as the adjudicator can lend it. Instances arising and requiring the application of the Law to them must be reached and as properly covered as possible, regardless of any shortcomings found in statutes; and no human need remediable through legal science shall continue unremedied because of statutory deficiency, when the same can be supplied.

Jurisprudence, thus cognizant of scientific deficiency, endeavors to maintain two general spheres which check and balance each the other. Herein is to be achieved minimum error and the highest degree of efficacy. Legislatures and courts are the two media through which is disseminated justice; and in their hands rests the science of Jurisprudence. Neither can be discarded, for their reciprocity is necessary and arbitrary. For it can no more be properly maintained that legislatures are capable of embracing within laws universally valid precepts, than that courts are capable of furnishing universally valid determinations. But inasmuch as creation and application have distinctly defined provinces, and are both therefore necessary in executing the end of the Law, the efficacious development and perfecting of each is sought.

Substantive law, or created, established rules commonly understood as constitutions, statutes, and customary laws of sovereign validity, is thus a sphere of the Law which is necessarily supplemented by particular determinations. A statute or established legal rule is often deficient in suiting the case for application arising under it, and courts are confronted with the problem of supplying the deficiency with justicial means which is more pertinently applicable than the deficient phase of the particular law. The supplement may not be a clear abrogation of the general sense of the law; it may be merely an emendation of the law, and yet be clearly a supplement. Courts, having as their province the interpretation and enforcement of laws as they exist, are generally supposed to never apply anything not found in the laws; but this is inevitably done, nevertheless. Courts must first interpret laws before they can apply them; and individual interpretations will occur so long as there are individual courts. For all courts to interpret laws the same is a condition which no one will reasonably expect,—especially in the light of the complex and highly differentiated scheme of modern judicial determinations.

But courts, furthermore, must manipulate the laws, and make them apply with reason and justice. This is at times performed to the astonishment of those whose own interpretations have been refuted; and in other cases it is done with little resulting conflict. There are also instances when courts have supplied or departed from the spirit of laws, with the result that neither they nor anyone else has noticed the emendation or departure. But that courts must execute individual determinations, because of unanticipated cases arising which are not completely covered, judicial history amply bears out. Such a condition should appear obviously inevitable when it is considered that adjudicators are nearer and more closely related to cases to which laws are to apply than are legislators,—and certainly no one will contend that courts appreciate legal need in a lower degree than do legislatures. Created laws lie dormant, becoming useful to man only as courts take them and work them into the affairs of men. On their journey through diverse ways into the multiplied affairs of mankind, laws may look only to courts for their guide. To effect justicial results, substantive legal rules must apply

to human need as it is apprehended, as it presents itself in its true nature; with the consequence that judicial determinations, conscionably viewing the need, must direct the application. It is the purpose of laws to apply with justice as diversely as possible, and their justicial guide alone is able to conduct their complex content to a still more diversified and complex system of needs which calls for them.

Efficiency in Law lies in its applicable validity,—in its highest attainable degree of nearness to universality of applicability to the manifold system of instances or cases arising; which is achieved in legal pertinence, in determining individual laws to suit their respective cases, inasmuch as cases are impossible of determination to suit their respective laws.

But it is substantive rules that guarantee security to the Law. Laws may be said to be a guide for courts, as well as courts for laws. Established legal rules guide courts along the pathway which has been ascertained and marked out by experience, and which has that degree of maximum certainty born of repetition and constancy. Substantive rules are the product of all phases of legal science, —the result of both original legislation and amendatory. Laws created as the result of judicial determinations, as well as laws initiatory, enter into the content of substantive law; so that it is looked to as the head of Jurisprudence and the most certain source of justice. Permanence in legal science rests with created, established laws or rules, and not in the tortuous, though necessary and inevitable, process of diverse adjudication. For judicial precedent cannot be said to be the safest or best guide in legal science, inasmuch as individual determination springs from particularity, from the contingencies of single cases. And while it is for judicial determinations to guide the laws to their cases, it is yet for established rules to furnish the standard holding maximum corroboration and certainty. Court determinations or decisions may very properly become precedent in the sense of their being a standard for similar, or practically identical, cases; but they can never supplant the necessity of established, fundamental rules,—which are both the guard against and the refuge from the elusiveness and uncertainty of the manifold of individual determinations. The so-called case law serves the great and very important office of illustration and comparison, but does not possess the validity and dependability held by substantive law. What was once case law often becomes substantive, but until it does, there cannot be accorded to it the latter's established validity. The Law's security rests in the rules which have arisen from the turmoil and conflict of legal uncertainties, and have acquired that validity born of experience.

The Law's problem is to reconcile and cause to co-operate, in the highest attainable degree, its two necessary and conflicting spheres. Because of the constant arising of unascertained and uncertain subject-matter for legal attention, agreement and reconciliation can be attained only in the maximum; but human vigilance with human perseverance acknowledges no labor too baffling to be undertaken and carried toward perfection.

William W. Brewster.

The Legal Experience of a Theologian

BY MARVIN LESLIE HAYWARD

of the Hartland (N.B.) Bar

A CERTAIN secular and profane writer of a wild and wayward disposition is responsible for the statement that he did not know whether laws were right or wrong; but from my own brief legal experience I have no hesitation in declaring that laws are absolutely and utterly wrong, at least that portion of the law governing what the lawyers call "torts" or wrongs, the definition of which[1] is as involved as the latest views of the "higher criticism."

At the age of twenty-two I graduated from the theological seminary, and the same summer I received and accepted a call from the Lincoln Street Church, in the town of ———.

I found the town very pleasantly located, and the church plant and members were all that I could wish for. The young people especially were very active and helpful, and no pastor could ask for better support than I received in all my varied efforts to strengthen the spiritual condition of the church and improve the general moral tone of the town.

Miss Ethel Thornton, the charming and only daughter of Deacon Thornton, was one of the most sympathetic workers in the church, and I soon found that I was taking more than a pastorly interest in our association together, and looked forward with the keenest pleasure to our frequent and protracted consultations over the various phases of church work. Naturally, in a town of that size the pastor of the leading church and his personal affairs were matters of considerable importance, and already there were audible hints that the new pastor would soon be occupying the neat little parsonage. Her father was evidently not opposed to the idea; she was, as I have said, his only daughter, and he was possessed of considerable worldly property.

True, as some good friends warned me, there had been some sort of an early boy and girl attachment between Ethel and young Earle Ferris, who was then the junior member of one of the law firms that infested the county seat, and that he always spent his brief vacations in the town.

I did not, however, have the time or inclination to worry over my rival *in absentia*. Ethel was certainly as gracious as I could wish, and an important question arose which demanded my whole attention, and which came about in this wise.

Our county was then "dry," in theory, if not fact. True, Lawrence Wyman did handle some spirituous liquors, but he did it very quietly, and his people had been among the original settlers of the town.

A few months after my arrival, however, a man named Clark came from the upper part of the state, bought and opened up the old Exchange Hotel, which had been closed for nearly a year; and in a few weeks it became generally

[1] "A tort is an act or omission which, independent of contract, is unauthorized by law, and results either in the infringement of some absolute right to which another is entitled, or in the infliction upon him of some substantial loss of money, health, or material comfort beyond that suffered by the rest of the public, and which infringement or infliction of loss is remediable by an action for damages." Underhill, Torts.

known that he "was handling booze hand over fist," as one of the young men expressed it.

At a meeting of the clergymen of the town, called for the purpose of considering the question, it was decided that on the following Sabbath evening each pastor refer to the matter as vigorously as possible, in order to work up a strong and united public sentiment as a foundation for future proceedings to enforce the prohibitory law.

At the same time young Ferris arrived in town; but I paid little attention to the matter, as I was busy preparing my sermon for the coming evening service, and in my humble opinion it was the very best I had ever delivered.

The evening of the special temperance service arrived, and the church was crowded with eager and devout hearers. Never before had it been my good fortune to face so inspiring an audience. I caught sight of Ethel and Ferris in the Thornton pew, but felt no uneasiness. I was convinced that when she listened to my sermon, and compared it with the best mental efforts of the young and beardless attorney, she could not fail to see the great and manifold advantages of a clerical career.

My sermon was listened to with rapt attention, and at its close a suppressed murmur of approval showed that it had touched a responsive chord in every heart.

I referred to the coming of Clark, quoted the law governing the liquor traffic, appealed to the true temperance sentiment of every law-abiding citizen, requested every member of my church to go home, and, before they placed their heads on their pillows, to pray earnestly, as I already had prayed and would pray with them, that "before to-morrow's sun floods the morning hills with light, the avenging lightning of offended Heaven might strike and utterly destroy that outpost of sin, that stronghold of Satan, so that our fair town might stand forth cleansed and purified from the foul taint of that gigantic evil,—the liquor traffic."

I missed my accustomed walk home with Ethel; the delivery of the sermon had left me nervous and distraught, and I found it impossible to sleep. About half-past twelve a terrific thunderstorm set in, and a few minutes to one there came a crash that seemed to shake the whole earth, and I lay for a moment partly stunned and listening to the distant roll of the receding thunder.

The sound of the fire bell brought me to the window, where a hurrying citizen shouted that the lightning had struck the Exchange Hotel, and already a great shaft of flame showed that it was burning with all the traditional fury of a lightning-struck house. I dressed as rapidly as I could, but by the time I arrived the fire was already beyond control, and an hour later a mass of glowing ruins marked the site of the leading hotel of the town.

That afternoon young Ferris called at my study. I inferred at once that he had come to discuss my attentions to Ethel, and the fact that he felt it necessary to come to me gave me an easy sense of superiority, and I looked forward to the interview with the greatest confidence.

"I have been retained by Mr. Clark," he announced airily, "to start suit against you for the destruction of his hotel."

"Destroying his hotel?" I exclaimed.

"Yes," he replied. "The lightning struck the building in answer to your prayers and the prayers of your church members offered up at your request, and you will have to answer for the result in the courts. If you will refer me to your attorney," he concluded, "I will serve the papers on him instead of on you personally."

I did not know exactly what he meant, but I felt that I certainly needed legal assistance, and gave him the name of Mr. Blackstock, the leading attorney in the town, who was also the clerk of our church. He noted down the name without any appearance of being impressed thereby, and left with the remark that "it would be a beautiful case."

That evening the deacons and trustees met me in Mr. Blackstock's office to discuss the situation.

"This is certainly a novel case," declared the clerk, and proceeded to read what he called "the statement of claim."

It was complicated with the usual mass of legal verbiage, but the purport of it

was that Allison W. Clark had theretofore been the owner of a hotel in the town of ——; that I was the pastor of the —— church at —— aforesaid, that on the —— day of —— A. D., at —— aforesaid, I had stated at the evening service in said church that I had prayed that said hotel might be destroyed by lightning, and requested my congregation to pray for the same result; that a few hours later, in answer to and in consequence of said prayers, said hotel was destroyed by lightning; and that said Clark claimed to recover from me the sum of $10,000 for said loss and damages so sustained by him as aforesaid.

"What chance has he in law?" asked Thornton.

"The point involved is entirely new," replied Blackstock, "and I can find no precedents in the books to cover such a case. There is really no reason, however, under the general principles governing the law of torts, why the plaintiff cannot recover in this action, as there is good ground for arguing that the damage was the 'immediate and proximate' result of your act in praying for the exact result that actually did happen.[2] Of course, the point is so fine, and there is such a dearth of authority, that it is futile to hazard a very decided opinion one way or the other."

"The lawyer who started the thing is no fool, that's sure," declared one of the trustees.

"It is the finest point that I ever heard raised in my life," declared Blackstock warmly, ignoring, I thought, my obvious personal inconvenience.

"Why not defend the action," suggested one of the younger men. "Let the pastor deny that he had anything to do with burning the hotel, and then let Clark prove it if he can."

"That would be the only line of defense we could adopt," agreed Blackstock.

"But if you do that the pastor must admit that he has no faith in his own prayers, and did not expect them to be answered," objected Thornton.

"Which would seriously impair his influence," added another.

"And be a powerful weapon for new Freethinkers Society," contributed the senior trustee.

"It's certainly a serious dilemma, whatever course we adopt," seemed to be the general decision, and their manner towards me appeared distant and constrained.

"I think, brethren," I answered bravely, "that I understand the position and your attitude in regard to the matter. If we defend, the costs, which would in any case be borne by the church, would be quite heavy, win or lose; and as you have pointed out and I fully realize, the publicity would practically destroy my usefulness as a clergyman in the town. Under the circumstances the logical solution is for me to tender my resignation right now, and seek a new field of labor, —especially since I have felt from the beginning that my real duty lay in the mission fields of the great and growing West."

They accepted my resignation at once, with a pathetic effort to conceal their relief, and the next day I left —— forever.

Before leaving, however, I mustered up courage to call on Ethel, and endeavored to show what an ungentlemanly trick Ferris had played on me, and that she was apparently upholding him in the matter.

"Mr. Ferris's professional conduct does not enter into the matter at all," she declared coldly; "but you have shown the 'white feather' by resigning and running away."

All this happened many years ago, and was my first and only legal experience. I am now the pastor of a church in one of the leading mining towns in the state of ——, and I have never heard from Ethel or any news from the town of ——; but I often wonder if Ferris married Ethel, and what sort of a mark he made in the world,—whether he is now a bright and shining legal light, or an inmate of a Federal prison.

M. L. Haymond

[2] See Pollock, Torts, p. 27; Underhill, Torts, p. 32; and 22 Cyc. 422.

Editorial Comment

Is not this a lamentable thing, that parchment being scribbled over should undo a man?—Shakespeare.

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To What Extent is one Bound by an Instrument Which he Signs Under a Misapprehension of its Contents

IT IS a fundamental principle of the law of contracts that the minds of the parties must meet. To constitute a binding obligation, there must be an intention to do the thing, as well as an act of assent; so that an act without an intention is just as inoperative as an intention without an act,—both are required to consummate the obligation. So, if an instrument is fraudulently read to a signer in terms different from the real ones, or if by trick or fraud another is substituted in its place, or if its terms are fraudulently misrepresented, and the signer cannot read or is otherwise without laches, he is not bound by it. Nor is evidence tending to show that the instrument was signed under a misappropriation of its contents, thus produced, objectionable as varying its terms, since the purpose of the evidence is not to vary the terms, but to show that it was never actually executed.

It is, on the other hand, well established that where a person enters into an agreement with another upon an equal footing,—there being no fraud, undue influence, or relation of confidence or trust,—and, being able to read, signs the instrument without reading it, or, being unable to read it himself either because of illiteracy or defective eyesight, signs without procuring someone to read it to him, and no device is used to keep him from reading it or having it read, he cannot set up his own want of attention as a fact to invalidate it, although he may have acted under a misapprehension of its contents, and even though the other party may have imperfectly stated its terms. And if the paper is correctly read to the signer at the time of its execution, his misunderstanding of it cannot affect its validity. This is a necessary limitation of the fundamental principle above stated; as otherwise there would be no security in written contracts. Under such circumstances neither courts of law nor courts of equity will relieve the signer from the consequences of his folly.

But where the signature of a party to a written instrument is procured by a misleading or misrepresentation of its contents, the instrument will be either void in law or voidable in equity, according to whether the misrepresentation goes to the essentials of the instrument or relates only to its details. The consequences of this distinction are twofold: First, it determines whether the fraud is available

as a defense in an action at law based upon the instrument, or whether relief can be had only in a court of equity; second, it affects the rights of third parties based upon such instrument, since, if it is merely voidable in equity, the rights of third parties who have acted in reliance thereon in good faith will be protected, while if it is void in law third parties, though innocent of the fraud, can base no right thereon unless the party deceived is estopped from setting up the defense of invalidity as against them.

Although this distinction, abstractly stated, is readily apprehended, it is not so easy to trace in practice; and, as shown by a note in the just published volume of British Ruling Cases where the decisions are collated, the courts have differed to some extent as to the respective categories into which certain sorts of misrepresentations fall.

Where the signer is fraudulently induced to believe that he is executing an instrument of a totally different nature than that which is presented for his signature, it is generally agreed that the instrument is void in law; and such is also the case where the signer writes his name in ignorance of the fact that he is attaching it to any obligation whatever, as where he writes it for the purpose of showing how it is spelled, or of giving his name and address, or autograph, or where the ink used in writing a signature penetrates through the paper to another instrument placed beneath it.

But where the signer knows the general character of the instrument, or the property with which he is dealing, but is deceived as to the exact nature of the contents of the instrument, the question whether it is void in law, or merely voidable in equity, becomes a more difficult one. Under the strict rules of common-law pleading it is doubtful whether a plea of want of execution would have been sustained in such a case; but the modern practice is more liberal in this respect. There is, however, no well-marked dividing line. Perhaps as good a general test as any is, first, whether the signer is misled in some material particular, and not merely in a matter of detail; and, second, whether the misrepresentations of the other party, expressly or by necessary implication, negative the existence of the provision which differentiates the instrument from the one which the signer supposes he is executing.

It has been held that the instrument was not binding in cases where the signer was misled as to the quantity which he obligated himself to buy or sell; but there is a difference of opinion whether the deception of the signer in respect to the amount of a note, the time of payment, or the identity of the other party to the instrument which he executes, renders it void. The signer has been held not to be bound by a guaranty where he was misled as to the amount guaranteed; nor by a note where he was deceived as to the rate of interest; nor by an obligation where he was deceived as to the identity of the debt for which it was given; nor where he was deceived in the character of a bond or a deed; nor where he signed as surety upon the representation of the principal that the signature of another appearing on the obligation was genuine.

Considerable difficulty is presented by cases where the instrument is known to deal in some way with certain property, but its full effect is not understood; and the decisions are far from uniform. In one case where a brother obtained from sisters, who had no idea that they were thereby conveying their property, signatures to deeds upon the representation that their signatures were necessary to clear off a mortgage on the property, it was held that inasmuch as the sisters, though they did not understand the nature of the deeds, knew that they were executing something which dealt in some way with their property; the deeds were not void in law. And a similar conclusion was reached in a case where a warranty deed was signed in the belief that it was a mortgage; and a case in which a mortgage containing a personal covenant was signed in the belief that it was a deed. But the invalidity of the instrument has been affirmed in a case in which the signer did not know a present charge on the property was intended, though she supposed that she was enabling a future charge to be made; a case where one signed what he supposed to be a duplicate of a lease which had been read to, and by, him, but which proved to be a

deed of the leased premises; and a case where a person unable to read English was deceived, by the misreading of the document, into signing a lease for three years which he supposed to be for one year only. It is also a controverted question whether the deception of a grantor or mortgagor with respect to the identity of the property conveyed or encumbered, will render the deed or mortgage void.

Where a party is misled as to his legal responsibility in the premises, or as to the legal effect of the instrument signed by him, he cannot plead that it was not his act; but it is often a difficult matter to determine whether a representation relates to the contents of the instrument or to its legal effect.

Where deception has been practised by the other party or his agent, it is very generally held that the signer is not estopped from denying that the instrument is his obligation by the fact that he may have been negligent in signing it. It does not lie in the mouth of the guilty party to aver that the signer should not have trusted him. But where the deceit practised consists merely of the misrepresentation of the contents of the instrument (as distinguished from a misleading of it or fraudulent legerdemain in getting the signature thereto) which misrepresentation it is within the power of the signer to detect by reading the instrument or causing it to be read, there is a difference of opinion as to whether he should be permitted, even as between the parties, to avoid the effect of his signature. On the one hand it is said that it is better to encourage negligence in the foolish than fraud in the deceitful: on the other hand it is urged that to hold a contract valid notwithstanding a misrepresentation as to its contents, does not militate against the maxim that a person cannot take advantage of his own wrong, but enforces that other one, that the court will not constitute itself the guardian of persons of mature age and ordinary intelligence, protecting them against the result of their own negligence. The further argument is advanced in behalf of the latter view that the law will not furnish a person a remedy for a wrong where he cannot prove his claim for damages without showing that his own negligence intervened between the act of the alleged wrongdoer and the result complained of, and was the real, efficient, producing cause of his injury; and that in such a case it will be conclusively presumed that he voluntarily accepted the situation, because if he had used ordinary care the injury complained of would have been prevented. This view appears to be largely based upon a statement in 2 Kent Com.* 485 that "the common law affords to everyone reasonable protection against fraud in dealing; but it does not go to the romantic length of giving indemnity against the consequences of indolence and folly, or a careless indifference to the ordinary and accessible means of information." But the context of this passage shows this statement to have been made, not with reference to the situation here in question, but in the course of a discussion of the maxim, *Caveat emptor,* and the reciprocal rights and duties of a seller and purchaser of personal property.

Although, a party may have been so deceived in the contents of an instrument signed by him that it will not be considered in law as his act, a further aspect of the question is presented where the rights of an innocent third party are involved. In such a situation he may be estopped by his own negligence to deny that he executed it, as against one who, without knowledge of the fraud, has parted with value in reliance on its apparent validity. But in order that such an estoppel may exist, there must not only be carelessness on the part of the signer, but also a duty towards innocent third parties of which such carelessness constitutes a breach.

The fundamental principle upon which the cases proceed which hold the signer estopped, is that embodied in the maxim that when one of two innocent persons must suffer loss, he who by his negligent conduct has made it possible for the loss to occur must bear it. But this maxim is said by some courts not to have a universal application, but properly to be limited to cases in which the act in question has the assent of the will of the actor but in respect to which he is guilty of some negligence; as, for example, where one delivers his absolute obligation to another with the understanding that it is to take effect only upon certain con-

ditions, or where he leaves it to another to insert the proper amount, or leaves it in such shape as readily to admit of alteration.

With the exception of the decisions as to the rights of bona fide holders of negotiable instruments, which are perhaps referable to the special privilege accorded to commercial paper from considerations of public policy, rather than to the maxim above stated, though the latter is sometimes adduced in their support,—there is a difference of judicial opinion as to whether any duty to ascertain the true character of an instrument is owed by one whose signature thereto is fraudulently procured, to one who parts with value on the faith thereof, such as a person to whom a guaranty is given, the obligee in a bond, a subsequent purchaser of realty relying on the genuineness of a deed which the grantor has executed not knowing it to be such, an innocent mortgagee, or the assignee of a mortgage or contract void in law for fraud in its execution.

To summarize: Where the contents of an instrument are fraudulently misrepresented to the signer, and the misrepresentation goes to the essential character of the instrument, or where the signer's signature is procured by a trick, he is not bound thereby, there being no consensual basis for the obligation, and third parties can base no rights thereon; but where the misrepresentation relates to a matter of detail, the instrument is his act in law and he must go into equity to obtain its reformation. Where, on the other hand, no device is used to keep the signer from fully acquainting himself with the contents of the instrument, he may not set up his failure to do so, or his misapprehension of its contents, to show that the minds of the parties did not meet; and this he may do even though the other party in undertaking to state its terms may have done so imperfectly. But although a person may have been so deceived as to the contents of an instrument signed by him that it will not be considered in law as his act, he may nevertheless, under some circumstances, be estopped from setting this up as a defense. As against the party guilty of the trickery or misrepresentation, the better view is that he is not estopped. Whether he will be considered as estopped by his failure to exercise reasonable care in signing to deny that the instrument is his act, as against an innocent third party, may be regarded as an open question.

Where the fraud is extrinsic to the instrument, as where fraudulent misrepresentations are made in the preliminary negotiations or there is fraud in the consideration, it is nevertheless in law the act of the signer, who must resort to a court of equity for relief.—E. S. Oakes.

Professional Ethics

THE Committee on Professional Ethics, of the New York County Lawyers Association, has answered recently the following question.

QUESTION No. 90.

A and B come into the office of C, an attorney, and A employs him to draft a deed conveying certain property to B. Before the deed is drawn, C discovers that the title to the property is defective. Should he divulge this fact to B, who has had nothing to do with his employment?

ANSWER No. 90.

In the opinion of the Committee, the question implies that B reposes trust and confidence in C as a lawyer, and in effect that the lawyer is asked to represent both parties. Therefore, in the opinion of the Committee, C should disclose the defect to both A and B. If C is not acting for B, the Committee is of the opinion that C should only continue to act for A after advising B to secure separate counsel.

Readers' Comments

A Message from the Ozarks.

EDITOR CASE AND COMMENT:

Camped for the summer on the Caddo river in the Arkansas Ozarks, where clear springs, transparent streams, cool mountain breezes, picturesque drives, and eye and mind resting vistas present themselves whichever way one wanders, I am forced to confess that the July number of CASE AND COMMENT with its forum on maritime laws and the features and phases of admiralty caused me to forego one fishing trip and lured me from two boating excursions!

Myself no lawyer, although fortunate enough to count among my many best friends lawyers of the Middle West and coast, it gave me special pleasure to note not less than three of the able articles in July CASE AND COMMENT, over the signatures of personal friends, and in the case of Judge Ashton's treatment of "The Genealogy of Our Maritime Law," a veritable piece of summer literature,—cool with the shadows of ancient history, and refreshing, withal, with the veritable salt sea spray, a world touch of kinship!

I repress the inclination to comment on many of the articles, but especially appreciated the almost epigrammatic philosophy of Thomas W. Shelton, of the Norfolk Bar, in his paragraph touching on "Paternalism with Respect to Keeping Faith with Pioneerism." wherein he states that "this country needs fewer new laws and more real men; it needs less jural regulation and more moral sensibility; it needs less public training and more domesticity; it needs fewer codes and more Decalogues. It is certain death to manhood and good citizenship to lead men away from personal responsibility and self-reliance into the delusion of artificial standards."

Perhaps Arkansas is no more burdened with so-called special acts and local laws than many other states, but their operation is here, to my mind, more apparant than elsewhere, when one comes face to face with game laws, water rights, public improvements, and several other items of public interest and public—may we so call it—heritage!

As the world's heritage, according to Cunningham, is the Sea, so it would appear that those of us whose lots are cast in the interior might reasonably look upon the streams and forests as our heritage with the feeling that it were unnecessary to be ever kindling fires to guard our rights and privileges against the encroachments of legislators with no loftier motives and no wider visions of action than fashioning new laws that perform no greater functions than provide positions for political workers!

Permit me to thank you for the genuine and refreshing hours your July number has given me. I note your August number will be an Automobile number. I scarcely think you can make it more interesting! If you do, I will be tempted next summer to take my vacation on the city lawn under a tree with CASE AND COMMENT!

Yours Respectfully,
GRAHAM BURNHAM.

Glenwood-on-the-Caddo
In the Highlands of Arkansas.

Without Due Process of Law.

EDITOR CASE AND COMMENT:

All the property many people possess is their salaried positions. People employed under the Civil Service of the United States and of the various states and municipalities consider that they cannot be deprived of the same without due process of law. But such is now and then done. People are removed without a chance at defense. Investigations are held, it is true; but the person whose position is being investigated is barred from being present at the investigation, and is refused permission to see even a copy of the evidence taken against him, or even know who has testified against him. If our courts were conducted in the same manner, half of the people in any state would be hanged. Yet by these methods people are deprived of their positions. It is true that a short statement of the charges is given the accused; but with that only he has but poor show at a defense. People who testified that such and such things happened at a certain postoffice, for instance, might have been fishing on Hudson bay at the time they allege they saw the certain things happen in the United States postoffice in question. Yet the accused has no show at defending himself against such evidence, as he does not know of the evidence or of the person who gave it.

I have a letter in my possession which reads: "I and the inspector were in his room, and only he and his stenographer knew what I testified to. . . ." Yet the persons who were testified against were removed through this person's testimony.

An inspector also told me that he took two young ladies to a hotel and bought them an $11 dinner, and that while at the dinner he secured a statement from one of them, and secured her affidavit on the same as soon as the dinner was completed. He continued: "Mr. L——" (the man whose position he was investigating) "did not know anything about my seeing these two ladies; but I got him. I have information that he will be removed." (And he was removed.)

Would any honest judge or any intelligent jury tolerate such a proceeding?

The Civil Service needs remodeling, at least in this respect. The accused should be permitted to hear all the evidence taken in the investigation, and should be furnished a copy of the inspector's report and all papers in evidence sent in against him.

Ibapah, Utah. ALBERT B. REAGAN.

A precedent embalms a principle—Disraeli.

Attachment — foreign corporation — effect of compliance with local laws. That a statute giving foreign corporations which comply with the local laws all the rights and privileges of like domestic corporations, and subjecting them to the laws of the state applicable to like domestic corporations, does not exempt them from the operation of the statute authorizing an attachment in actions against defendants not residing in the state, is held in Jennings v. Idaho R. Light & P. Co. 26 Idaho, 703, 146 Pac. 101, which is accompanied with supplemental annotation in L.R.A.1915D, 115.

Bills and notes — passing through hands of bona fide purchaser — rights of original payee. That the payee of a note unenforceable because of lack of consideration cannot, by repurchasing the paper after transferring it to a bona fide purchaser for value, without notice, acquire the rights of such purchaser, so as to hold the paper free from equities, is held in the South Dakota case of Shade v. Hayes, 151 N. W. 42, L.R.A.1915D, 271.

Carrier — loss of baggage — delay in claiming — inability to procure sleeping car accommodations. A passenger who does not claim his baggage at destination until forty-eight hours after its arrival is held in the Colorado case of Denver & R. G. R. Co. v. Doyle, 145 Pac. 688, L.R.A.1915D, 113, not entitled to hold the carrier liable as insurer for loss of the baggage twenty-four hours before by burglary, although he failed to reach destination earlier because of inability to procure sleeping car accommodations, if he did not notify the carrier that he would not accompany the baggage.

Conspiracy — against United States — white slave traffic — guilt of woman. A woman it is held in United States v. Holte, 236 U. S. 140, 59 L. ed. —, 35 Sup. Ct. Rep. 271, annotated in L.R.A.1915D, 281, may conspire "to commit an offense against the United States" within the meaning of the provisions of the Criminal Code of March 4, 1909, § 37, although the object of the conspiracy is her own transportation in interstate commerce for purposes of prostitution, contrary to the white slave act of June 25, 1910.

Constitutional law — exclusive privileges. An ordinance limiting the collection of garbage in a particular city to one licensed collector is held not unconstitutional as granting exclusive privileges in Rochester v. Gutberlett, 211 N. Y. 309, 105 N. E. 548, annotated in L.R.A.1915D, 209.

Contract — offer — counter proposition — effect. A party to whom an offer of contract is made must either ac-

cept it wholly or reject it wholly. A proposition to accept on terms varying from those offered is a rejection of the offer, and a substitution in its place of the counter proposition. It puts an end to the negotiation so far as the original offer is concerned. The original offer thereby loses its vitality and is no longer pending; hence the party who has submitted the counter proposition cannot, it is held in Lewis v. Johnson, 123 Minn. 409, 143 N. W. 1127, L.R.A.1915D, 150, at his own option, revive and accept the original offer which he has once virtually rejected. In order to give the rejected offer any new vitality, there must be a renewal of it, or renewed assent to it, by the party who made it. In a case within the statute of frauds, the agreement to deal on the basis of the rejected offer must be in writing.

Corporation — right to inspect books — benefit of rival. That a stockholder of a corporation also holds stock in a rival corporation, and desires to inspect its books to enable him to ascertain its prices and customers, so that the rival may underbid it and discredit its work to its customers, is held in the Washington case of State ex rel. Gwinn v. Bucklin, 145 Pac. 58, L.R.A.1915D, 285, not to deprive him of the benefit of a by-law entitling each stockholder to inspect the books and records of the corporation at any time during business hours.

County — control by legislature over funds. The legislature is held entitled in State ex rel. Bell v. Cummings, 130 Tenn. 566, 172 S. W. 290, to divert the proceeds of bonds issued by a county under statutory authority for the construction of a particular highway to the construction of other highways within the county.

The right of the state to authorize or direct the diversion of county funds to a purpose other than that for which they were collected is the subject of the note appended to the foregoing decision in L.R.A.1915D, 274.

County — special assessment — payment. The question as to the fund from which an assessment against a county or town on account of benefits from a drain or other public improvement must be paid seems to have been first considered in the Oklahoma case of Wilkins v. Hillman, 145 Pac. 1111, L.R.A.1915D, 249, which holds that where substantial benefits are assessed to a county on account of drainage to the public highways, that part of the expense of constructing the drainage ditch apportioned to the county, corresponding with the amount of benefits conferred, must be paid by the county out of funds raised by general taxation.

It is further held that part of the expense of constructing a drainage ditch assessed against a county for benefits accruing to such county by virtue of drainage of the public highways cannot legally be paid out of funds collected by special assessments made against the property located in such drainage district.

Evidence — criminal prosecution — subsequent similar acts. Upon a prosecution for statutory rape, evidence of subsequent acts of intercourse between prosecutrix and accused are held admissible in People v. Thompson, 212 N. Y. 249, 106 N. E. 78, L.R.A.1915D, 236, if they are so related by brevity of time, continuity of lewdness, or otherwise, to the principal act, as to justify the inference or indicate that the mutual disposition of the parties evidenced by them existed at the time of such act.

Evidence — death — presumption. An absentee it is held in the Louisiana case of Quaker Realty Co. v. Starkey, 66 So. 386, L.R.A.1915D, 176, is presumed to live until the contrary is proved; otherwise the absence must be such that the life of a man, who may live one hundred years, should be presumed to have ended.

Evidence — declaration of pedigree — status of declarant. Declarations by a person since deceased, of relationship to a particular family, are of themselves held insufficient in Aaholm v. People, 211 N. Y. 406, 105 N. E. 647, annotated in L.R.A.1915D, 215, to establish such relationship, so as to render admissible

evidence of his declarations with respect to the pedigree of persons claiming to be members of such family.

Evidence — separate arson. Evidence of fires which had taken place from time to time under agreement between two persons to get the property insured and one to set it on fire and the other collect the insurance and to share in the proceeds is held not admissible in People v. Grutz, 212 N. Y. 72, 105 N. E. 843, L.R.A.1915D, 229, upon a trial of an indictment for causing one of the fires, if each was a separate transaction, with no relation between them in respect to time, place, or circumstances, so that the mere evidence of the origin of one would tend to prove the origin of another.

Highway — obstruction — fright of horse — effect. Where a person is riding upon a well-broken horse ordinarily sure of foot, not at an unusual speed, and such animal, without fault on the part of the rider, becomes frightened and temporarily unmanageable, and, by reason of coming in contact with a defect in a street negligently created or permitted to remain therein by a city, falls and injures such rider, it is held that the municipality is liable therefor, in the Oklahoma case of Muskogee v. Miller, 145 Pac. 782, L.R.A.1915D, 243.

Homicide — negligence of physician. A medical man, or a person assuming to act as such, it is held in State v. Lester, 127 Minn. 282, 149 N. W. 297, will be held guilty of "culpable negligence," within the meaning of Gen. Stat. 1913, § 8612, subdiv. 3, defining manslaughter in the second degree as homicide committed without design to effect death, "by any act, procurement, or culpable negligence" not constituting a higher crime, where he has exhibited gross incompetency or inattention, or wanton indifference to his patient's safety.

Recent cases on negligence of a physician as homicide accompany this case in L.R.A.1915D, 201, the earlier authorities having been collected in 61 L.R.A. 287.

Injunction — against waste of public money — right of taxpayer. That a citizen and taxpayer of a state has no standing as such to contest the expenditure of funds under an alleged unconstitutional statute is held in the Louisiana case of Sutton v. Buie, 66 So. 956, which is accompanied in L.R.A.1915D, 178, by a note on the right of a citizen or taxpayer to enjoin waste or unlawful expenditure of state funds.

Injunction — obstruction of highway — special injury. One who has occasion to pass over a highway more frequently than others is held in Borton v. Mangus, 93 Kan. 719, 145 Pac. 835, annotated in L.R.A.1915D, 142, not to sustain special damage peculiar to himself beyond that of the general public, which would entitle him to relief by injunction.

Insurance — accident — loss of hand — construction. A policy providing compensation for accidental loss of a hand by removal at or above the wrist is held in the Oregon case of Moore v. Ætna L. Ins. Co. 146 Pac. 151, annotated in L.R.A.1915D, 264, to cover an accident requiring the removal of all the bones of the fingers at the wrist, leaving only flesh enough to protect the bones remaining and the thumb in a stiffened and useless condition.

Insurance — change of location of property — materiality. The permanent removal of an automobile from one garage, where it was insured, to another, is held not such an immaterial breach of warranty that the policy will not be avoided thereby in Lummus v. Firemen's Fund Ins. Co. 167 N. C. 654, 83 S. E. 688, annotated in L.R.A.1915D, 239.

This case further holds that a policy on an automobile to be kept in a specified private garage with the privilege of operating the car and housing it temporarily, in other places while *en route* or being cleaned or repaired, which has been suspended by the permanent removal of the car to another state, is not restored by temporarily placing the car in a repair shop without returning it to the place specified in the policy, so as

to render the insurer liable for its destruction while in such shop.

Insurance — for wife — effect of divorce. The benefit accruing from a policy of life insurance upon the life of a married man, payable upon his death to his wife, naming her, is held in Filley v. Illinois L. Ins. Co. 91 Kan. 220, 137 Pac. 793, to be payable to the surviving beneficiary named, although she may have years thereafter secured a divorce from her husband, and he was thereafter again married to one who sustained the relation of wife to him at the time of his death.

This decision is accompanied in L.R.A. 1915D, 130, by a supplemental note on the effect of a divorce on the rights of a beneficiary, under an insurance policy or benefit certificate, the earlier authorities having been presented in 3 L.R.A. (N.S.) 478, and 39 L.R.A.(N.S.) 370.

Insurance — increase of risk — temporary use. The mere temporary use in an insured barn of a gasolene engine to thresh grain is held in the Maine case of Bouchard v. Dirigo Mut. F. Ins. Co. 92 Atl. 899, annotated in L.R.A.1915D, 187, not to be within a provision in the policy making it void if the situation or circumstances affecting the risk shall be so altered as to cause an increase of the risk.

Intoxicating liquor — keeping — purpose. That a statute making it unlawful to keep, store, or possess any intoxicating liquors in any place other than a private residence will not be limited to a keeping for sale, where other provisions relate to a keeping for such purpose, is held in the Kentucky case of Com. v. Smith, 173 S. W. 340, which is accompanied in L.R.A.1915D, 172, by a note presenting the recent cases on power to prohibit the keeping of intoxicating liquor irrespective of any intention to sell it in violation of law, the earlier authorities having been collected in 26 L.R.A.(N.S.) 394.

Malicious prosecution — probable cause — question of law. What constitutes probable cause for an arrest is held to be a question of law, in Matson v. Michael, 81 Kan. 360, 105 Pac. 537, and, if a complaining witness believed upon reasonable grounds that the accused was guilty, it is not material, in an action against him for malicious prosecution, whether he believed that probable cause existed in a legal sense, unless as bearing upon the question of malice.

An extensive note on whether the question of probable cause is for the court or jury accompanies the foregoing decision in L.R.A.1915D, 1.

Master and servant — assumption of risk — danger of fall from roof. That the foreman of a roofing gang assumes the risk of injury from falling from a roof upon which he is at work, because of the absence of gutters or hangers thereon to protect employees from falls, is held in Daisey v. Wagner, 162 Ky. 554, 172 S. W. 942, L.R.A. 1915D, 157.

Mechanics' lien — for architect's plans. An architect who, under contract with the owner of land, furnishes plans and specifications for the construction of a building thereon, is held entitled in Lamoreaux v. Andersch, 128 Minn. 261, 150 N. W. 908, accompanied with supplemental annotation in L.R.A.1915D, 204, to a lien upon the building and land upon which it is constructed, though he does not supervise the construction.

This case further holds that if the owner, after the plans are furnished, of his own volition and without fault of the architect, abandons the construction of a building on the land, the architect has a lien on the land. An actual improvement is not necessary to a lien.

Municipal corporation — license — messenger service — bond. The first case dealing with the regulation of the messenger business is apparently the Oregon case of Portland v. Western U. Teleg. Co. 146 Pac. 148, L.R.A.1915D, 260, which holds that under charter authority to regulate occupations within its limits, a municipal corporation may require one undertaking to transact a messenger business within the city to secure a license and furnish a bond for the

faithful performance of the duties incident to such business.

Negligence — attractive nuisance — retaining wall. A railroad company which maintains without barriers an inclined retaining wall with a wide, smooth top, along the side of a viaduct lawfully constructed over a city street, is held not liable in the Kentucky case of Coon v. Kentucky & I. Terminal R. Co. 173 S. W. 325, although the top is some distance from the surface of the street, for injury to a child who climbs upon the wall and falls off onto the street, upon the theory of attractive nuisance.

The authorities on the doctrine of attractive nuisance as applied to walls, fences, etc., are gathered in the note accompanying the foregoing case in L.R.A. 1915D, 160.

Principal and agent — ratification of representation of value by broker. The effect upon the vendor's responsibility for representations by a broker, of the fact that the broker was originally employed by the vendee, seems to have been considered for the first time in the Oregon case of Whitney v. Bissell, 146 Pac. 141, L.R.A.1915D, 257, which holds that a property owner cannot accept the benefits of a contract for sale negotiated by a broker finally compensated by him, although he acted originally for the purchaser without ratifying the statements as to the income of the property made by the broker to effect the sale.

Railroad — injury by article hurled from track — liability. A railroad company is held not liable in the Texas case of Trinity & B. Valley R. Co. v. Blackshear, 172 S. W. 544, L.R.A. 1915D, 278, for injury to a person near its right of way by a loose spike used to fasten the rail to the tie, which was hurled from the track by a rapidly moving train, even though the company knew of the condition of the spike, since such injury could not have been anticipated.

Railroad — power of Commission to change location of depot. A Railroad Commission is held to have authority in the Arkansas case of St. Louis, I. M. & S. R. Co. v. Bellamy, 169 S. W. 322, annotated in L.R.A.1915D, 91, to change the location of depots formerly established, under statutory power to hear petitions for the establishment, enlargement, equipment, and discontinuance of depots, and determine the character of construction, equipment, change or enlargement of depots which shall be supplied.

Sale — right to accept rejected offers. One who, in response to a quotation for flooring, orders a quantity with an irregular matching to which the quotation did not apply, which the seller declines to fill, cannot perfect a contract, it is held in Shaw v. Ingram-Day Lumber Co. 152 Ky. 329, 153 S. W. 431, by merely notifying the seller that regular matching will be satisfactory, since, having rejected the original offer, his power to accept it without renewal was gone.

The cases on the right to accept an offer after submitting a counter proposition, are gathered in the note accompanying the foregoing decision in L.R.A. 1915D, 145.

School — exclusion for lack of vaccination — effect on compulsory education law. That the exclusion of a child from school because of failure to comply with the law making vaccination a condition to admission does not justify the parents' neglect to comply with the compulsory education law is held in People v. Ekerold, 211 N. Y. 386, 105 N. E. 670, annotated in L.R.A.1915D, 223.

Statute — absence of signature of speaker — effect. The absence from the enrolled bill in the office of the secretary of state, of the signature of the speaker of the house of representatives, is held in the Iowa case of State ex rel. Hammond v. Lynch, 151 N. W. 81, L.R.A.1915D, 119, to render a statute void where the Constitution provides that every bill, having passed both houses, shall be signed by the speaker and president of their respective houses.

Vendor and purchaser — failure to name wife in contract — effect. Failure to name the wife in a contract ap-

parently made by the husband alone, to convey their joint property, is held in the Michigan case of Agar v. Streeter, 150 N. W. 160, annotated in L.R.A.1915D, 196, not to prevent its binding her interest, if the instrument is properly executed by her.

The court frankly says: "It is probable that if the weight of authority depends upon the number of decisions, old and new, my conclusion is opposed to the weight of authority." There would seem to be no doubt as to the correctness of the statement.

Will — devise for life with power of disposition — estate created. A life estate only which the life tenant cannot take out of the possession of the trustee is held to be created in Louisville Trust Co. v. Snively, 162 Ky. 461, 172 S. W. 911, L.R.A.1915D, 153, by a devise to be held in trust for the use and benefit of a person specified "during her life, with power to dispose of the same by her last will and testament."

Recent English and Canadian Decisions

[NOTE.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.

Bankruptcy — discharge —effect on mortgage of expectant share as next of kin of living person. An assignment by way of mortgage of one's expectant share in the estate of a living person is held in Re Lind [1915] 1 Ch. 744, to create not merely an obligation to transfer the property when the share in expectancy falls into possession, but an actual interest in the assignee, just as if the assignee had been possessed of the property at the date of the assignment, so that the remedy of the assignee is not merely a personal remedy in damages against the assignor, but a right *in rem* against the subject of the assignment. In consequence of this view it was held that such an assignment was not affected by the assignor's discharge in bankruptcy proceedings in which the assignee did not prove his debt.

Banks — account at one branch — demand of payment at another branch — liability. A demand by a depositor at a branch of a bank other than that with which he had an account does not, in the absence of a request to the branch with which the depositor has credit or to the head office, to pay or to remit the balance due him to the other branch, impose a liability therefor upon such other branch. Clare & Co. v. Dresdner Bank [1915] 2 K. B. 576.

Carriers — restriction of liability — goods consigned by passenger train — carriage by freight. Where a carrier undertakes to carry a consignment by passenger train, upon the terms of a consignment note which, in consideration of a reduced rate below the ordinary rate for the carriage of goods by passenger train, relieves the carrier from all liability for delay other than that arising from wilful misconduct on the part of the carrier's servants, the carriage of the consignment by passenger train is of the essence of the contract, so that after the consignment was transferred to a freight train, the contract was no longer being performed and the carrier was therefore not relieved from liability by the stipulation above recited. Gunyon v. South Eastern & C. R. Co.'s Managing Committee [1915] 2 K. B. 370.

Collision — liability of party causing, for expense of removing wreck. That the harbor authorities may recover from the party through whose fault the collision occurred which resulted in a wreck, the expenses incurred by them in buoying, lighting, marking, and subsequently removing the wreck by blowing it up, whether the case is regarded from the point of view of the breach of duty or negligence of the defendants or from that of a public nuisance caused through their fault, is held in The Ella, L. R. [1915] P. 111.

Criminal law — false pretenses — burglary insurance — pretended bur-

glary. A jeweler who was discovered in his shop tied hand and foot, with his safe open and empty, pretended to the police that he had been robbed, but afterward confessed that he had done so in the hope that the police would make a report by which he might obtain the policy money on his burglary insurance. He made no claim from the underwriters. It was held in Rex v. Robinson [1915] 2 K. B. 342, that upon those facts he could not be convicted of an attempt to obtain money from the insurers by false pretenses, as what he did was merely preparation for the commission of the crime, and not a step in the commission of it; though it was said that if he had made a claim of the money from the underwriters or had communicated to them the facts of the pretended burglary upon which a claim was to be subsequently based, he clearly could have been convicted of an attempt to obtain the money.

Insurance — reinsurance — compromise between original assured and original insurers — right of reinsurer to benefit of compromise. A contract of reinsurance being a contract of indemnity, the reinsurer is entitled to the benefit of a compromise made by the original insurer with the original assured, notwithstanding the reinsurance policy does not contain the clause "to pay as may be paid thereon," and although the reinsurer declined to become a party to the compromise and defended the action on the reinsurance policy on the ground that there was no constructive total loss of the property insured. British Dominions General Ins. Co. v. Duder [1915] 2 K. B. 394.

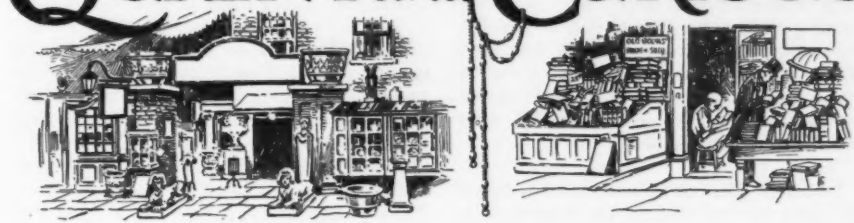
Perpetuities — limitations too remote — gift over of life interests to persons in being. A gift over of a life interest in personal property to persons in being at the time of the creation of such interest, if dependent upon the failure of limitations that are too remote, is held in Re Hewett [1915] 1 Ch. 810, to be in itself void for perpetuity; the learned court, though heedful of the contention of Professor Gray, in his book on Perpetuities, that such interest ought to be held valid, considering himself bound by the earlier English decisions to the contrary.

Wills — advances by way of loan to be "taken in full or part satisfaction" of benefits given by will — release of debt. Where a testator who had given to his son by his will certain specific and present gifts, and certain other gifts which were reversionary and difficult to calculate the value of, directed that all advances by way of loan to his son should "be taken in full or in part satisfaction, as the case may be," of the legacies and various benefits given to his son under his will, the words "shall be taken in full or in part satisfaction" of the benefits under the will amount to a gift to the son of his indebtedness, and are sufficient to involve a bequest to him of a difference, if any, between the two amounts in the event of the debts exceeding the benefits bequeathed to him by the will. Re Trollope [1915] 1 Ch. 853.

Wills — bequest of chattels — liability of estate of life tenant for loss or injury. One to whom chattels have been bequeathed for life with remainder to another is held in Re Swan [1915] 1 Ch. 829, to be in the position of a trustee or bailee for the remainderman, so that a claim for compensation for articles lost or injured cannot be resisted by his executor on the ground that the claim against the estate of the life tenant is based on tort and merely personal.

Wills — circumstances putting legatee to election. Re DeVirte [1915] 1 Ch. 920, holds that where by a foreign will not so executed as to pass real estate in England, real estate in England is devised away from the heir and personal estate is bequeathed to the heir, the heir is not bound to elect between the real and the personal estates, but takes both.

QUAINT and CURIOUS



Each change of many-colour'd life he drew.—Johnson.

Ownership of Extracted Bullet. Who owns an extracted bullet? This question is being widely debated in Berlin.

The patient wants the bullet as a curiosity. The surgeon likes it to illustrate his successful operation, especially in lecturing before students, or writing to his medical journal on the subject.

A judge has decided that a wounded soldier has a perfect right to the bullet that lodged in his body, because when it reached him, it was legally subject to nobody's ownership. The enemy relinquished its ownership in sending the bullet forth. This question of no ownership does not give the surgeon who extracts the bullet any right to it, even if the wounded soldier at the time should be unconscious and unable to assert his claim. Should the surgeon nevertheless retain the bullet extracted from him, the soldier has a good cause for damages against him.

Other jurists, however, assert that the enemy does not lose its ownership after the firing of a bullet; that ammunition belongs to the state, and not to the individual soldiers. Whoever comes out victorious in a battle has a right to all the ammunition that has been fired which can be recovered from the wounded or dead.—Exchange.

Clothes and Credibility. A half dozen years ago, writes Judge J. W. Donovan, was concluded a long, bitter will contest that was heard before four judges and three separate juries. It is known in Michigan reports as the McIntyre Will Case.

On the hearing in probate court, the will was promptly thrown out as not either signed or witnessed. On appeal to the circuit court, it came in the nature of a last will, which counsel promised to prove by one who had seen it signed. This witness, a hired man of very meager memory or certainty, was so weak mentally that the trial court asserted he could not believe such testimony, and would not ask a jury to believe it. A verdict was directed denying the will.

The supreme court in a few caustic sentences said: "It is not what the trial judge would not believe, but the province of a jury." So the case came on again, resulting in a disagreement and another trial before a broad-minded judge who could not believe the little subnormal witness; but owing to an accident the jury did believe him. This was the accident that did it. On the cross-examination of the witness counsel pressed him hard as to what clothing he wore, which he said was farmer's clothing (quite shabby), right from the field, and counsel added: "The suit you have on is a new one?" "Yes," "Now, tell us who bought you the suit you have on? Who furnished the money?" "Well," drawled the witness, "I am from the Soldiers' Home in Grand Rapids, and we all wear uniforms furnished there."

This so appealed to the jury as to win the case. But later, in denying a new trial, the trial judge laid such stress on the weakness of the proof that the higher court threw out the will entirely.

Fifty-Fifty. When a dollar bill went fluttering down a street in Philadelphia recently, a negro grabbed it. He resisted the claims of a white man who

claimed to be the loser so well that both went before a police court justice. After hearing both sides he handed down this decision: "I believe the dollar belonged to the white man, but since the negro found it he is entitled to a reward. I therefore decree that each take 50 cents and call it a day's work."

Pouring Oil on Troubled Waters. The case was reached on the trial docket, and just as the judge took his seat one of the lawyers walked up to the opposing counsel and said to him: "You agreed to so and so." The latter replied: "I did not." Thereupon the first lawyer angrily assented in audible tones that his opponent was "a d——n liar," and the latter shook his fist in the face of his accuser and said that he was "a d——n scoundrel." Here the court intervened and blandly said: "Now, gentlemen, since you have thoroughly identified each other to the court, you will please proceed with the case," and the case run on thereafter like a ribbon.

The Chicken Oath. For the first time in the history of the Vancouver courts the chicken oath was administered recently to Mah Quang, a Chinaman, who was a witness in the case of seven men charged with rioting at Nanaimo. After the oath was administered a young white cock was procured, its head placed on a block of wood, and chopped off by the Chinaman. The ceremony was witnessed by a large crowd of persons.

Breach of Contract. Henry T. Rainey, member of Congress from Illinois, lives on a big farm when he's at home, and often has trouble obtaining good help. Some time ago he employed a Swede who seemed to have little or no superstitions against work, but toiled from early morn to set of sun. Moreover, he seemed contented and happy, and Rainey was not a little pleased. But out of a clear sky one day came the man's resignation. He said that he desired to quit at once.

"And what's the matter?" was Rainey's natural inquiry.

"Well," said the man, "when I came here you promised me steady work the year around, but last night I didn't have a thing to do for three hours."

Deaf-Mute Divorce Suits. The quietest divorce trial ever conducted in Nevada took place at Winnemucca. Not a word was spoken to or by the plaintiff. Both parties were deaf-mutes.

A wealthy landowner sued his wife, Rebecca, alleging desertion in October, 1910. They were married in November, 1909. She wrote this note and handed it to him:

"I can't stand living with you any longer. I wish you would leave here.—Becca." The defendant had five children by a former marriage.

The plaintiff's attorney placed before him a written list of necessary questions, and the court waited while he wrote his answers to each. The wife made no answer to the suit.

A similar case was tried in Detroit. Working his fingers and facial expressions almost unceasingly, a deaf-mute told Judge Mandell how his wife, who also is a mute, scolded and otherwise abused him. The story was told through a deaf interpreter, and at its conclusion Judge Mandell, signing, remarked, "We all have troubles of our own," and signed a decree of divorce.

Another witness, also a deaf-mute, told of things coming under his observation, and none of his testimony was objected to as being merely hearsay. Clerk Thomas Fraser administered the oath in his loudest tones to the deaf interpreter, who in turn worded it on his fingers to the witnesses. Asked to give his address, the complainant rapidly spelled a gestured something with his right hand. The interpreter, with a quizzical look on his face, turned to the judge and remarked, "Funny, but I never heard of that street," and the judge smiled and said he had not either.

When the witness showed how his wife threw a bottle at his head everybody ducked.

Alimony Knows No Sex. After fourteen years of married life, a couple living at Far Rockaway have agreed to live apart, but instead of his binding himself to pay her a regular allowance, she

has bound herself to pay him a set sum weekly.

This amicable agreement was reached shortly after they decided on separation. They did not get on well together, but as neither relished the prospect of a squabble in the courts, they thought it best to part friends. The trouble was in the money. He had nothing, and she had $75,000, but as this tidy sum had been the fortune he settled on her shortly after their marriage, both believed that he was entitled to some of it.

So they filed with the county clerk an agreement whereby she was to pay him $10 a week during her lifetime, and bequeath him $100 a month in the event of his surviving her.

This incident illustrates the claim of the suffragists that alimony knows no sex. They assert that between 1887 and 1906 the courts of this country required over six thousand women to thus pay tribute to their divorced husbands. Seventy-two per cent of the aggrieved wives who seek alimony get it; also 70 per cent of aggrieved husbands who seek alimony get it. It is not in any equal suffrage state that the greatest number of women have been required to support their ex-husbands, but in Ohio and Michigan and Nebraska, where men have refused to enfranchise women.

Cited Case and Comment. A resident of Taylor county, Iowa, sued a resident of Page county, on a note payable in the former. The defendant alleged fraud in the inception of the contract, and, as permitted by statute, asked for a change of venue to his own county. At the same time he alleged a counterclaim far in excess of plaintiff's demand, and asked judgment. The plaintiff's attorney, Frank Wisdom, of Bedford, Iowa, opposed the charge on the ground that, having invoked the action of the court, he was not entitled to a change. In support of his position he cites CASE AND COMMENT in the following amendment to his brief and argument:

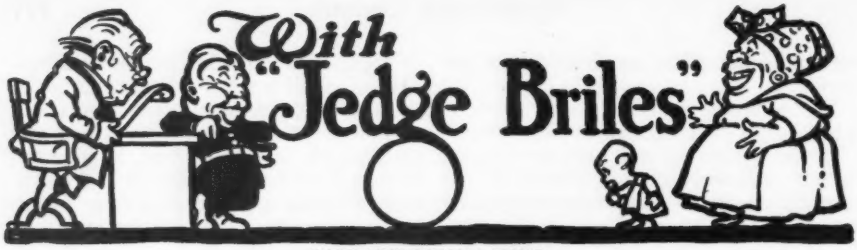
Because the case to which plaintiff now desires to refer and cite as an authority had not been published when his original argument was made, he now files this amendment, and in support of his contention that, the defendant having voluntarily pleaded a counterclaim far in excess of plaintiff's claim, and having asked judgment for such excess and more, and such counterclaim being upon a cause of action that plaintiff could not be sued by defendant in Page county, nor change of venue granted from this to that county, and having "prayed" for such affirmative relief, he is thereby estopped to ask for the change of venue, now cites the following very pertinent holding:

The Ladies Aid Society of Hulbert, Oklahoma, versus Trustees of the M. E. Church, South, is the style of a case tried in the justice court and appealed to the county court. A plea in *abatement* was filed on the ground that the plaintiff was neither a person, a copartnership, nor a corporation, and was therefore without capacity to sue. The court held that because the lawyer in the justice court, who was also a preacher, had demurred to the evidence and prayed for affirmative relief by way of adjudging the property to be that of the defendant, he had waived the right to object to the capacity of the plaintiff to sue. Whereupon Mr. Bruce L. Keenan, a local lawyer, explained the situation as follows:

"Mr. Harris, you see, is a preacher as well as a lawyer; *but his trouble is that he prayed before he was called on, and was required to stay through the service till the benediction.*" CASE AND COMMENT, June, 1915, page 77.

Plaintiff makes but one other point in this amendment. To enliven the court is as much the duty of the attorneys as to enlighten the court, because a lightning-like gleam of humor not infrequently pierces further than the steadiest light of reason can possibly go.

The plaintiff cites the above not only because it is "funny," but because it is good law.



BY W. LIVINGSTON LARNED

(Note.—Perhaps the most famous judge in the whole South presides in an Atlanta, Georgia, court, where dozens of negro cases come up daily. He is lovingly known as "Judge Briles" by his ever-changing audience, and while it is his stern mission and duty to administer punishment, as well as justice, the erring ones are devoted to him just the same. Judge Broyle's court is rich in negro stories, and it is from this picturesque source that a countless number of thoroughly authentic anecdotes have come.)

Fate Was Against Him.

"Sam Brown?"

"Yas, sah."

"You are accused of drinkin' gin."

"Me, Jedge!"

"Officer Muller says you were drunk and disorderly on Decatur street."

"I might er been des a bit onsteady, Jedge."

"Where did you get that jug of gin?"

"Sent to me fer my birfday, yo' Honor."

"Then you are known as a drinking man?"

"No, sah, not me, Jedge. Ef I ain't feelin' des perticlar right, I wets mah lips wid it, usin' only de cork."

"But, Sam, you must have had more than a mere lip-wetting when Officer Muller found you. Tell the court how it happened."

(Momentary pause.)

"Yo Honor,—Friday night wen I went ter bed I 'spected dey wuz burgulurs in de house, so I sot dat jug beside my pillow in de bed. Along 'twixt den an' sun-up de cork com out an' I woke up suddint-like, knowin' dat somththun wuz wrong. Dat jug wuz empty, Jedge, as sho' as yo' is sittin dar."

"But you were asleep,—how could you have consumed it?"

"Dat's hit, yo Honor, I done brought my wife along ter testify dat I sleeps wid my mouf open."

The Barber Shop Chord.

"You are charged with threatening your neighbor with a razor," declared the court, looking down upon a short, stubby, watery-eyed negro man whose face and arms were bandaged, and who gave every indication of having struck a couple of Fistic Waterloos. "Have you anything to say for yourself?"

The prisoner painfully pulled the medicated cotton away from his mouth.

"Hits des dissaway, Jedge," he retorted, "ef yo' fixes yo' sentence accordin' ter de one whut does de mos' damage, dat yuther yaller man ought ter be in de chain gang right now. Lawd, Jedge, dat nigger works in er barber shop. A razer don' mean nuthin ter him. Whut yer think he done, Jedge, when he seen me comin' wid dat razer? 'Nigger,' he sez, 'wait a minit 'till I git som' lather on mah face!'"

Just a Reasonable Loophole.

"Do you swear that what you tell shall be the Truth, the whole Truth, and nothing but the Truth?" was put to a venerable white-haired ante-bellum negro arrested for intoxication.

"Jedge Briles, yo, Honah," was the quick answer, "yo kin make hit a pow'ful lot easier fo' me ef yo'll leave out gin and chicken. 'Ceptin fo dat I guess I kin stick ter de truf."

Several Ribs Broken, Too.

The negro girl was up for stealing an umbrella from in front of a small local store. She admitted that she had taken the article, giving as an excuse a sudden and exceptionally heavy fall of rain.

"But have you no conscience?" the judge asked.

"Yas, yo Honor," the girl stammered, "but de handle done come off."

Tinted Polygamy.

The old negro had been arrested for "having more than one wife," the last woman being the complainant. He happened to be well known locally and an orderly character.

"How many wives have you had?" demanded the judge.

"Six, yo' Honor," was the reply.

"Why couldn't you get along with them?" the judge insisted.

"Well, suh,—de fust two spiled de white folks' clothes when dey washed 'um; de thu'd worn't no cook; de fo'th was des nacherally lazy,—en' de fif'—I'll tell yo', Jedge,—de fif' she—."

"Incompatibility?" the court suggested.

"No, yo' Honor," said the old negro slowly, "it worn't nothin' lik' dat. Yo' jes' couldn't get along wid her onless yo' wuz somewhars else."

The War Spirit.

A fat "colored mammy" of the "old school" was hauled into court for throwing her washing board at her neighbor's husband, a "Georgia Cracker," of the "Poor White Trash" variety.

"Did you strike this man with a washboard?" Judge Broyles asked.

"I spec' I did, yo Honah."

"What was the provocation?"

"We wuz discussin wah, Jedge."

"Well—go on."

"We wuz talkin' 'bout dem Germings an' John's Bulls and dem Frenchmens, and he done said I was Nutral, yo Honah. I ain't gwine ter let no low down white trash call me dat."

The Plaint of a Holy Roller.

Old Uncle Ezra was taken in custody for "breaking the public peace." Officer Lenox went on to explain that Uncle Ez had been arrested late Sunday night while running up and down the road in front of a small "colored-folks church." He was shouting and praying and raising a most unholy rumpus.

"Were you intoxicated?" the court inquired.

"No sah," Uncle Ez answered indignantly.

"I done had religion."

"What is your religion?"

"I'se a Holly Roller, Jedge."

"But why don't you do your praying in church?"

"Jedge," explained the aged negro slowly, "I done tried hit, but befo' I kin git ter de Rolling part I falls ersleep."

Slow Pay — Fast Driver.

"What do you know of the character of the defendant?" the judge asked a negro "washerwoman" subpœnaed in an accident. case. A white man had been arrested for careless driving of a secondhand Ford car.

"Hits tollable," Miranda said.

"Have you ever seen him drive his car before?"

"Yas, sah."

"Would you consider him careless?"

"Well, Jedge, ez fer de car,—dat little thing ain't gwinter hurt nobuddy, but being us is all here, I might ez well tell yo dat he sho' is keerless 'bout payin' fo' his wash!"

New Books & Periodicals

In science read by preference the newest works—Bulwer-Lytton.

"Outline of International Law." By Arnold Bennett Hall, J. D., Assistant Professor of Political Science, University of Wisconsin. (La Salle Extension University, Chicago.)

The stupendous events of the past year have aroused a wide-spread interest in the subject of international law, especially so far as it concerns questions of war, peace, and neutrality. This volume by Professor Hall is designed for the general student and reader who is interested in the world problems of the day. It is an elementary statement of underlying legal principles which, while not exhaustive, are ample to facilitate a popular understanding of international relations, both in peace and war. A series of appendices presents a classified bibliography, as well as Conventions of the Hague Conferences and the Declaration of London.

This is a most attractive and serviceable manual of the whole subject.

"Complete Guide to Public Speaking." Compiled and edited by Grenville Kleiser (Funk & Wagnalls Co., New York and London.)

This volume of over 600 pages contains 1,534 extracts from the world's greatest authorities upon public speaking and oratory. These excerpts cover the essentials of the subject, and are arranged alphabetically according to the topic to which they relate.

Mr. Kleiser has laid the world's literature, both ancient and modern, under contribution. Many hundreds of questions are answered in concise form. The abridgements, however, are of sufficient length to present each topic with all desirable fullness. The name of the author and of the title of the book quoted appear at the end of each article, affording a convenient bibliography to those desiring to pursue a question further. An ample index renders the subject-matter of the volume easily available.

The author has had long and varied experience in training students in public speaking, and his familiarity with their needs has enabled him to select with rare judgment and discernment the passages which he has included in his book.

"Evolution of Law Series: Vol. I. Sources of Ancient and Primitive Law; Vol. II. Primitive and Ancient Legal Institutions; Vol. III. (Ready late in 1916)." Compiled by Professor Albert Kocourek and Professor John H. Wigmore (Little, Brown & Co., Boston). 3 volumes, Cloth. $12. delivered.

These volumes gather together the materials for a study of comparative legal history, or of the evolution of legal institutions.

The first volume sets out concrete sources of ancient and primitive law. The illustrative materials are taken from various stages of culture, and represent practically the entire world, on the presupposition that there is a fundamental unity of the human mind exhibited in the weaving of the tissues of the law, modified by national psychology, climate, geography, and other internal and external factors.

This volume presents contemporary pictures of the legal life of peoples in ancient stages of civilization and of primitive peoples now living. It reproduces the text of all the principal and famous ancient codes, as well as a collection of documents from half a dozen different legal systems,—Egypt, Babylon, Assyria, Greece, Rome, etc. Some of them are documents used in actual legal transactions,—deeds, contracts, leases, wills, etc. Others are documents taken from trials,—oaths, depositions, judgments, etc. These serve to exhibit the legal principles in actual operation. The book may be summed up as a unique attempt to comprise in a single volume all the necessary materials to illustrate the evolution of law by the perusal of the original sources themselves.

The second volume gives a connected exposition of the various legal principles and institutions, for which the sources in volume one serve as illuminating examples. This volume two is really a systematic treatise in thirty-two chapters, taking up each topic in order. Only, since no such single treatise exists in any language, the volume is compiled by tak-

ing essays or chapters from some twenty-five different works and weaving them together to make a perfectly connected and systematic treatise.

In no better way can the comparative evolution of law be adequately studied. And now for the first time the materials have been made accessible in concise and convenient form.

The third volume (ready late in 1916) will compile similar chapters expounding the influences and the environment which have affected the evolution of the law at different times and places. Thus the reader will be enabled to take a larger view of the causes of this evolution, and to trace the reasons for its variations or similarities.

"Essay upon the Formation of German Public Spirit." By Jaques Flach, Member of the Institute; Professor of the College of France. (Société du Recueil Sirey, 22 Rue Soufflot, Paris) 3 francs (60 cents).

The purpose of this study, the author tells us, is to throw light upon an obscure mentality. It has been difficult for many Americans who have known the Germans as an industrious, honorable, kindly, and highly civilized people, to understand fully their attitude in the world war.

In this essay, which is singularly free from the partisan rancor which one might expect, the author attempts to disclose the forces which have shaped the ideas and guided the destiny of the German Empire until it stands arrayed against the nations of half the world.

He traces the transformation which Prussian influence has worked upon the public spirit of the German people, showing how they have been systematically trained to regard all non-Germanic peoples as obstacles to their progress, and how the vision of world-domination, political and economic, has been held up before them.

The contents of the essay are indicated by the following chapter headings: The Two Germanys; Public Opinion; the German Soul; Intellectual Formation and National Sentiment; Philosophic and Mystico-Religious Doctrines; Teuton Pride and the Desire for Power—History and the Present; Lying and Sophistry; The German Aspiration and the Popular Song; Prussianization—Realism and Illusion; Militarism and National Education; "Deutschtum" and "Organization;" The World-Country.

"The German Ruling Caste: Its Formation and Role." By Maurice Milloud, Professor of Sociologie at the University of Lausanne (Société du Recueil Sirey, 22 Rue Soufflot, Paris.) 2 francs, 50 centimes (50 cents).

It is to be regretted that this interesting little volume, written by a Swiss professor, is not available to the American public in the form of a translation. It comprises, first, a study of the ruling class of Germany with its two elements, the Prussian "junker" and the industrial capitalist; the principle articles of its ideology, "Pan-Germanism," the superiority of the Teutonic race, and imperialism; the reasons for the ascendancy of the ruling class over the masses; the ideas to which Nietzsche and Bernhardi have given expression, and their penetration to the minds of the common people; second, an attempt to find the causes for Germany's plunge into war in the incipient break-down of a scheme to dominate the markets of the world. As a criticism of the much-admired industrial and financial organization of Germany, this book will repay perusal, even though one may not always agree with the author's conclusions.

"How to Pay the Cost of the War." By Daniel Bellet, Perpetual Secretary of the Society of Political Economy, Professor of the Free School of Political Science and of the School of High Commercial Studies. (Société du Recueil Sirey, 22 Rue Soufflot, Paris.) 2 francs, 75 centimes (55 cents).

An estimate of the probable cost of the war, with statistical studies of the wealth and resources of the principal countries involved.

"The Exhaustion of Germany and the True Duty of France." By Georges Blondel, Professor of the School of Political Science. (Société du Recueil Sirey, 22 Rue Soufflot, Paris.) 1 franc, 50 centimes (30 cents).

A rather too optimistic, albeit very interesting account, based on odds and ends of information gathered from various sources, of the difficulties with which Germany is confronted in carrying on the war,—the loss of men, the threat of famine, and the scarcity of metals and other war materials,—coupled with an exhortation to the author's fellow countrymen to take advantage of the situation to expand their foreign trade.

"Manual of the Sherman Law." By Everett N. Curtis. 1 vol. Leather, $3.50.

Michie on "Carriers." 4 large volumes. Buckram, $26.

Clark on "Criminal Law." By William E. Mikell.

"Equity." By George H. Boke. 1250 pages.

Recent Articles of Interest to Lawyers

Attorneys.

"The Missouri Idea of Suppressing the Unlawful Practice of Law."—81 Central Law Journal, 4.

Banks.

"Bearing of the Federal Reserve Act on the City of New York."—32 Banking Law Journal, 403.

"Modern Banking and Trust Company Methods."—32 Banking Law Journal, 407.

"The Law of Banking."—32 Banking Law Journal, 397.

Charities.

"Charitable and Penal Administration."—6 Journal of Criminal Law and Criminology, 198.

Contracts.

"The Ancient Hindu Law of Contracts."—3 Contemporary Law Review, 295.

Courts.

"A Check on Judicial Supremacy." (Review of Statutes by Courts.)—19 Law Notes, 66.

Criminal Law.

"Material of Clinical Research in the Field of Criminology."—6 Journal of Criminal Law and Criminology, 230.

"Mental Tests and Practical Judgments."—6 Journal of Criminal Law and Criminology, 249.

"Some Sociological Aspects of Criminal Law."—13 Michigan Law Review, 584.

"The Criminal Codes of Connecticut."—6 Journal of Criminal Law and Criminology, 177.

Dueling.

"The Duel in Early Upper Canada."—6 Journal of Criminal Law and Criminology, 165.

Eugenics.

"Eugenics and Feeble-Mindedness."—6 Journal of Criminal Law and Criminology, 190.

Fiction.

"An Automobile Adventure."—The American Magazine, August, 1915, p. 35.

"And West is West."—The American Magazine, August, 1915, p. 7.

"At the End of the Rainbow."—Scribner's Magazine, August, 1915, p. 205.

"Hair and Half Hair."—Young's Magazine, August, 1915, p. 129.

"In Search of Adventure."—1—The Wide World Magazine, August, 1915, p. 305.

"Making Money."—Everybody's Magazine, August, 1915, p. 230.

"The Case of Anne Costello."—Young's Magazine, August, 1915, p. 234.

"The Deliciousness of David."—Young's Magazine, August, 1915, p. 250.

"The Family Tree."—Everybody's Magazine, August, 1915, p. 218.

"The Real Adventure."—Everybody's Magazine, August, 1915, p. 156.

Foreign Countries.

"A Woman Alone in China."—The Wide World Magazine, August, 1915, p. 321.

"Lisbon and Cintra."—Scribner's Magazine, August, 1915, p. 191.

"The Native Festivals of Java."—The Wide World Magazine, August, 1915, p. 343.

Husband and Wife.

"The Beginnings of the Community Property System in California, and the Adoption of the Common Law."—3 California Law Review, 359.

Initiative, Referendum, and Recall.

"An Eighteenth Century Recall of Judges."—3 California Law Review, 404.

Jails.

"Jails, Lockups, and Police Stations."—6 Journal of Criminal Law and Criminology, 240.

Mortgage.

"A Fraudulent Trust Mortgage."—26 American Legal News, 9.

"Trust Deeds and Mortgages in California."—3 California Law Review, 381.

Peace.

"The Submarine as a Peacemaker."—The American Magazine, August, 1915, p. 62.

Practice and Procedure.

"Procedural Reform."—13 Michigan Law Review, 667.

Real Property.

"The Nature and Importance of Legal Possession."—13 Michigan Law Review, 535, 623.

Religious Societies.

"Classes of American Religious Corporations."—13 Michigan Law Review, 566.

"Powers of American Religious Corporations."—13 Michigan Law Review, 646.

Treasure Trove.

"The Ancient Hindu Law Regarding Treasure Trove."—3 Contemporary Law Review, 296.

Trusts.

"Blind Trusts in Conveyances."—81 Central Law Journal, 40.

Unfair Competition.

"Advertising and Unfair Methods of Competition."—26 American Legal News, 17.

Waiver.

"The Extension of the Right of Waiver."—3 Contemporary Law Review, 297.

War.

"Impressions of the English Attitude Toward the War."—Scribner's Magazine, August, 1915, p. 251.

"The Money Side of War."—The American Magazine, August, 1915, p. 18.

Judges and Lawyers

A Record of Bench and Bar

FEW lawyers have manifested so great a practical interest in the welfare and progress of their profession, as has Charles A. Boston. He has not only lived the life of a busy practitioner, but has found time to write many articles for legal publications, has delivered addresses by invitation before numerous bodies, and has been an active member of the American and New York State Bar Associations, and of other societies. He laid, by early acquirements, a broad foundation for future usefulness, having attended the City College in his native city of Baltimore, and thereafter Johns Hopkins University, where he pursued studies in history and politics under Herbert B. Adams and J. Franklin Jameson. Later he graduated in law at the University of Maryland, and was admitted to the bar of that state. Since 1889 Mr. Boston has practised his profession in New York city. He formed a law partnership in 1893 with William Woodward Baldwin, who was third assistant secretary of state under Richard Olney, in the administration of President Cleveland, but retired from this partnership in 1900 to become associated with Hornblower, Byrne, Miller, & Potter. On the withdrawal of Mr. Byrne in 1907, he became a member of the firm of Hornblower, Miller, & Potter, and, after the withdrawal of Honorable Wm. B. Hornblower to accept a position upon the bench of the court of appeals of New York, became a member of the present firm of Hornblower, Miller, Potter, & Earle. He has for fourteen years been actively engaged in the affairs of these successive

CHARLES A. BOSTON

partnerships. His firm has long been actively engaged in important legal work of the highest character and of a practical nature; and he has had abundant opportunity for experience and the development of a full appreciation of responsibility. He has a wide acquaintance at the bar of the city of New York, and in many parts of the United States, and has appeared in litigation in many of the Federal districts.

Mr. Boston is a frequent contributor to magazines and periodicals. A notable article entitled "The Lawyer's Conscience and Public Service" appeared in the Atlantic Monthly for September, 1914. Other recent articles have been: The Spirit Behind the Sherman Anti-Trust Law, in the Yale Law Journal; A Protest against Sterilization Laws, in the Journal of the Institute of Criminal Law and Criminology; Certain Remedies for Defects in the Administration of Justice, in the University of Pennsylvania Law Review; and, in collaboration with Everett V. Abbot, an article in the American Law Review on "the Judiciary and the Administration of the Law."

He is the author of the articles in Witthaus and Becker's Medical Jurisprudence on Privileged Communications between Physicians and Patients, and upon the Medical Laws of English Speaking Countries; and he contributed to the article upon Mental Unsoundness in Its Legal Relations.

Mr. Boston has rendered valuable services to local, state, and national bar associations. For two terms he was vice president for New York of the American Bar Association. As chairman of the section of Legal Education he presided at the last meeting of the section in the city of Washington. He devised the present methods adopted by the association for transmitting its information to the press. As a result of his efforts upon the membership committee he had the satisfaction of seeing the membership from New York state doubled in one year.

The profession at large owe a debt of gratitude to Mr. Boston for the service which he has rendered as chairman of the committee on Professional Ethics of the New York County Lawyers' Association. During his chairmanship this committee has received and developed its power to answer inquiries upon the propriety of conduct among lawyers. It has become known as the Legal Ethics Clinic. The answers of this committee are widely used in the law schools of the country for practical instruction in legal ethics, and are published in many periodicals.

His interest in Legal Ethics is further indicated by the fact that he has been a member of the American Bar Association Committee on Professional Ethics, and has written articles and given addresses on various phases of the subject. He recently spoke upon this topic, before the Minnesota Bar Association, with particular reference to ambulance chasing and the disciplining of attorneys.

In politics he is an independent Democrat, being locally affiliated with the Jeffersonian Alliance. He has never sought nor occupied political position or appointment; but he was recently selected by one of the justices of the New York supreme court to sit as one of the commissioners of appraisement to appraise the lands, including an operating gas plant in the city of New York, to be taken by the city for the construction of the new improvements on the Hudson river for the installation of 1,000-foot docks for the largest transatlantic steamships.

It should also be mentioned, as an illustration of the wide scope of his interests and usefulness, that he is a member and has been president of the trustees of the New York Society of Medical Jurisprudence; until recently was president of the American Society of Medical Jurisprudence; and is now a member of the advisory council of the American Judicature Society, and of the advisory committee of the National Economic League upon the Efficient Administration of Justice.

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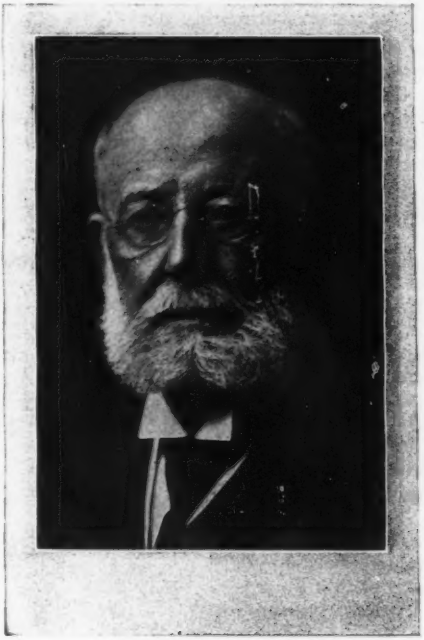
Charles A. Hawley, LL. D.

A Legal Practitioner for Over Half a Century

ON the occasion of the eighty-third birthday (June 4, 1915) of Charles A. Hawley, an eminent lawyer of Seneca Falls, New York, many biographical notices appeared in various newspapers in Seneca county and elsewhere in western New York. From these, from "Whose Who in America," and from some publications related to his college, the following sketch has been prepared for our readers: Charles Anthony Hawley, son of Henry L. and Polly (Moore) Hawley, was born in Marshall, Oneida county, New York, June 4, 1832. His father was a merchant and afterwards removed from Marshall to Augusta, New York, from which place after a long endeavor, the way was opened for him to go to college. He entered Hamilton College in the fall of 1855, was graduated in 1859, receiving one of the honors of his class. He then entered the Albany Law School, and from it was admitted to the bar in 1860.



CHARLES A. HAWLEY

Before his college days and during his college course, he wrote now and then for the newspapers, and while at the law school was for one season legislative correspondent for the Utica Daily Observer.

After his admission to the bar, he entered the law office of Honorable Francis Kernan in Utica, New York, but before long began business for himself at Trumansburgh, New York. In January, 1864, he removed to Seneca Falls and became partner of Honorable Josiah T. Miller, then county judge and the most prominent lawyer of Seneca county. In his partnership, which lasted until July, 1878, he was kept busy in a large practice, covering all branches of the law. During this period, he was admitted to practise in the district and circuits courts of the United States. In July, 1878, his partnership having been dissolved, he opened an office at Seneca Falls and practised alone until January 1, 1896. During this period and since, he has been engaged in many extensive and important cases. From 1880–84 he was counsel for the state in a large number of cases, and since that time has been counsel in numerous cases in the court of claims. He has been and is a director in several, and attorney for many, corporations; has been local counsel of Gould's Manufacturing Company since 1878, and of the Exchange National Bank since 1885. He was counsel for Skaneateles water owners in the famous condemnation case by the city of Syracuse 1891–9. He has been engaged in many important cases concerning water powers, and has achieved some reputation in that department of the law.

In 1895 he was made a charter mem-

ber of the "Society for the Preservation of Scenic and Historic Places and Objects."

In January, 1896, he formed a partnership with Mr. Hermon A. Carmer, and his office at Seneca Falls continues to be conducted in the name of Hawley & Carmer. For several years he was senior member of the law firm of Hawley, Nicholas, & Hoskins, having offices in the neighboring city of Geneva. His life has been a busy one and almost wholly devoted to professional work. In his early years, he wrote now and then, was in some demand as a lecturer and made occasional addresses on public occasions, but in late years he has had little time for other than professional duties. He has not published any books except a history of his college class in 1899, forty years after graduation.

He was admitted to practise in the Supreme Court of the United States in 1889.

On September 7, 1868, he married Marion Catharine Crane, daughter of Charles Crane, of Seneca Falls. She died January 21, 1915. They had two children—Anna T., now Mrs. Fred L. Story residing at Seneca Falls, New York; and Charles Crane Hawley, who graduated from Hamilton College in 1899, was thereafter admitted to the bar, opened an office in Geneva, New York, but his health failed and soon after he died.

Though he has been many times delegate to conventions, he has never sought or held political office except that he represented his senatorial district in the constitutional convention of 1894. He was chairman of the committee on corporations in that body. For many years he was United States Commissioner, appointed by the judges of the United States circuit court. In 1898, he was appointed by Judge Coxe referee in bankruptcy for the counties of Seneca, Wayne, and Yates, and has continuously held that position down to the present time. He was the first president of the National Association of Referees in Bankruptcy and was re-elected and served for a second term.

Of late years Mr. Hawley's activities in addition to his duties as referee in bankruptcy have been almost exclusively devoted to serving as referee and acting as counsel in the argument of important cases in special term; at the appellate divisions and in the court of appeals. He has always been a good friend to the young lawyers with whom he has come in contact, and they have been accustomed freely to resort to his wider experience for counsel in the legal problems by which they were from time to time perplexed.

In 1884, he was elected a permanent trustee of Hamilton College, and is now the oldest trustee upon the board and the oldest one in point of service except the Hon. Elihu Root, whose appointment antedates Mr. Hawley's by a single year. He was also for many years trustee of Auburn Theological Seminary. In 1894, Hamilton College conferred upon him the honorary degree of LL.D. He is a member of the Chi Psi and Phi Beta Kappa fraternities.

This sketch may well be concluded by the following extract from one of the newspapers of Seneca Falls:

"Charles A. Hawley, who has been a practising attorney in this village for more than half a century, reached his eighty-third birthday on June 4th. He has been blessed with almost unimpaired health, a very level head, and undisturbed nerves, and has achieved distinction as one of the best and most successful lawyers in western New York. What more could he ask?"

William Ballard Hoyt

A Leader at the Bar of Western New York

WILLIAM BALLARD HOYT, for years one of the most eminent members of the bar of western New York, died on June 11, 1915. His learned attainments and all-around capabilities account for his notable career at the bar, his success before juries being almost phenominal. He was born in East Aurora on April 20, 1858. He received his preliminary education at the Aurora Academy and Buffalo high school, following which in the fall of 1877, he entered Cornell University. During his course at that institution, Mr. Hoyt paid especial attention to history and political science. He was one of the prize orators of his class and was prominent in college journalism. Besides being managing editor of the monthly magazine, one of the editors of the college weekly, he was prominently identified with the founding of the Cornell Daily Sun. He was graduated in 1881.

WILLIAM B. HOYT

It is of interest to relate that the Phi Betta Kappa society which was established at Cornell two or three years after Mr. Hoyt graduated, extended to him, first of all, an invitation to become a member.

Upon the completion of his studies at the university, Mr. Hoyt returned to Buffalo and entered the office of Humphrey & Lockwood, one of the leading law firms of the city.

After being admitted to the bar in 1883, the name of the firm became Humphrey, Lockwood, & Hoyt. The firm name was again changed in 1896 through the addition to it of William C. Greene and George D. Yeomans. Following the death of Judge Humphrey and the retirement of Mr. Yeomans, further changes occurred in the firm, until the formation of the firm of Hoyt & Spratt in 1907. During his connection with the firm of Hoyt & Spratt, Mr. Hoyt became actively interested in automobile manufacturing, becoming a large stockholder in the Pierce Motor Company, of which he was also a director. His attorneyship included not only this large company, but also several big corporations, including the New York Central Railroad. Mr. Hoyt served as United States assistant district attorney for the northern district of New York from 1886 to 1889. In 1894 he was appointed to the United States Interstate Commerce Commission for the state of New York, with the official title of assistant attorney general. Although active in the counsels of the Democratic party, Mr. Hoyt never held public office except for the instances just mentioned.

Actively connected with various social organizations in Buffalo, Mr. Hoyt was for six years a director of the Buffalo club and served a term as presi-

dent of it. He was a curator of the Buffalo library for three years, and served on the board of school examiners for two terms. He was also a director of the Buffalo Fine Arts Academy for some time. He attended the First Presbyterian Church.

Mr. Hoyt was one of the organizers and long continued as one of the most active members of the Cleveland Democracy club of Buffalo. The club grew famous throughout the country for its staunch support of the three-times Democratic standard bearer and throughout its existence there was no more loyal advocate of the Cleveland principles than he.

One of Mr. Hoyt's most notable acts of public service was the drawing of the "incorporation act" of the Pan-American Exposition. This was a special act put before the legislature to broaden the scope of the original company which had planned the great Buffalo exhibition. The purpose was to broaden the scope of the exposition movement to take in citizens as well as civic officials.

This achievement by Mr. Hoyt was considered unique at the time, and he gave a great deal of painstaking endeavor before he finally accomplished his end. Among those who knew of his achievements in connection with the exposition movement, there was universal opinion he should be chosen one of the directors of the Pan-American. He declined a directorship, explaining there were other men whom he considered more worthy.

Few men led a more beautiful home life. He was a devoted husband and a fond father. He loved his home and family, and he provided for them from a bounty as large as his affections were deep and lasting.

He will be fondly remembered, not only by those who knew him intimately, but by others who, though remote from him in the day's work, felt the warmth of his good nature and the influence of his rugged honesty and integrity.

Death of William M. Ivins

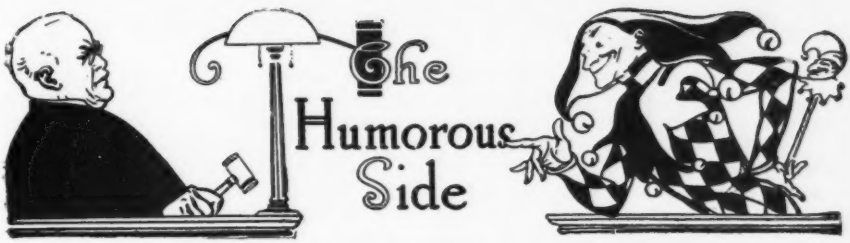
William Mills Ivins, one of the most brilliant lawyers in New York city, whose last conspicuous legal service was as counsel to William Barnes in the latter's suit for libel against Ex-President Roosevelt, which terminated with a verdict against Barnes, died on July 23.

He had many facets. In botany, in biology, in languages, political history, and general literature he was extremely well versed, and drew upon his memory stores for his trial-room, after-dinner, or stump speeches. His library on Napoleon he rated as one of the most extensive in America, including, as it does, a medallic history of the Corsican.

"Many who read of the death of William M. Ivins," states the New York World, will be astonished to learn that he was only sixty-four years old. It was twenty-six years since he had held office. His work with the Fassett committee and the Charter Commission was almost as remote. His mayoralty campaign was ten years ago. His law practice had long been confined to cases that especially appealed to him, like the Barnes-Roosevelt libel suit.

"The acute intellect that made Mr. Ivins conspicuous at thirty made him at sixty a man of extraordinary learning as well as keenness. With an unusual knowledge of languages, his most recent amusement was in making for his own use a more satisfactory English translation of the French philosopher Bergson. He was called our first authority on local politics and city history. His knowledge of national matters was no less profound and exact.

"Samuel W. McCall in his life of Thomas B. Reed says that his library, perhaps the largest in Maine, contained 5,000 volumes, besides law books and some 500 in French. That was slender, as were Mr. Reed's means and facilities for gathering books, compared with the vast private collection of Mr. Ivins, one of the most remarkable in the country along certain lines. It was in his library, indeed, because of its excellence and completeness in the political field, that the brilliant Ostrogorsky composed the greater part of the American volume on 'Democracy and the Organization of Political Parties.'"



"Cheerfulness is what greases the axles of the world; some people go through life creaking."

Gross Negligence. "Bill's going to sue the company for damages."

"Why, what did they do to him?"

"They blew the quittin' whistle when 'e was carryin' a 'eavy piece of iron, and 'e dropped it on 'is foot."

Remarks Censored. "So you've got an accident to report, have you?" said the head clerk to the foreman of the works.

"Yes, sir," said the foreman. Then he paused a while, gnawing his pen reflectively, before handing over the report.

The latter read as follows:

"Date: March 31st. Nature of accident: Toe badly crushed. How caused: Accidental blow from a fellow workman's hammer. Remarks: ————."

"Right," said the clerk. "But why no remarks?"

"Well, sir," replied the foreman slowly, "seein' as 'ow you know what Bill is, and seein' as 'ow you know that it I didn't like to put 'em down."
was 'is big toe what was hurt, I—well,

De Minmis Non Curat Lex. A husky Ethiopian came into a lawyer's office, and exhibiting a scalp wound about three inches long on top of his head, wanted to know if he could "git anything for dis heah." In response to a query from the lawyer he explained: "Well boss, it was like dis: Ah wus wuking down by dis heah new buildin', an' a fo' poun' brick fell off'n de sixteenth story an' hit me smack on top de haid."

A grasping and heartless construction company, although admitting the facts and their liability, refused to pay more than $10, on the ground that the evidence failed to disclose any material damage.

Serving Two Masters. A. B. Storms, former president of the State College, Ames, Iowa, in his lecture, "Are We Sane or Insane," tells the following incident in his discussion of the mad rush of American youth to get positions, to get at something that will bring them money.

"My sister, who served as a missionary, once asked a raw Norwegian girl if she didn't want to serve the Lord. 'Nope,' said the girl, 'Aye got a yob.'"

Unequal Competitors. "Now, Thomas," said the foreman of the construction gang to a green hand who had just been put on the job, "keep your eyes open. When you see a train coming, throw down your tools and jump off the track. Run like blazes!"

"Sure!" said Thomas and began to swing his pick. In a few minutes the Empire State Express came whirling along. Thomas threw down his pick and started up the track ahead of the train as fast as he could. The train overtook him and tossed him into a ditch. Badly shaken up, he was taken to the hospital, where the foreman visited him.

"You blithering idiot!" said the foreman, "didn't I tell you to take care and get out of the way? Why didn't you run up the side of the hill?"

"Up the soide of the hill, is it, sor?" said Thomas through the bandages on his face. "Up the soide of the hill? By the powers I couldn't bate it on the level, let alone runnin' uphill!"—Kansas City Star.

A-weary. "Don't you get tired of having nothing to do?"

"Nothing to do!" echoed Mr. Cumrox. "I haven't had a real rest since I was doin' regular work. What I want is an eight-hour law to regulate this round of pleasure mother and the girls have got me into."—Washington Star.

From the Chestnut Tree. "Pat was drowned."

"Couldn't he swim?"

"Yes, but he was a union man. He swam eight hours and quit."

He Laughs Best Who Laughs Last. "Sure, Oi'll write me name on the back o' your note, guaranteein' ye'll pay ut," said Pat, smiling pleasantly as he endorsed Billup's note, "but Oi know dommed well ye won't pay ut. We'll have a laugh at th' ixpinse of the bank."—Life.

Too Deliberate. A judge, in remanding a criminal, called him a scoundrel. The prisoner replied, as he was leaving the courtroom:

"Sir, I am not as big a scoundrel as your Honor"—here the culprit stopped, but finally added—"takes me to be."

"Put your words closer together," said the judge.

Never Had 'Em. Old Dick was an old plantation darkey. He was rarely, if ever, sick, and he always claimed that it was the way he had lived. One day as he was walking down the street, a local merchant, taking advantage of his ignorance, accosted him thus:

"Dick, one of your best friends has just told me that you have ancestors of the worst sort."

"Now, look heah, Cap'in Gawg, I doan want to hurt nobody, but I jes want to know who dat man was, wot tol you, and I sho will go atter him 'cause he done gone and 'sult me. Me got ancestors? Why, Cap'in, that's as big a lie as was eber told, I neber had nothin' in my life but de mumps and colic."—National Monthly.

No Difference. A darkey running a ferry across the Alabama river was accosted by a poor white stranger who wanted to cross, but hadn't the wherewithal.

Pete scratched his wooly poll, perplexedly, then inquired: "Doan' yo' got no money at all?"

"No," was the dejected reply.

"But it doan' cost yo' but 3 cents ter cross," insisted Pete.

"I know, but I hain't got 3 cents."

After a final inward think, Pete remarked:

"I done tell yo' what; a man what's not got 3 cents am jes' as well off on dis side ob the ribber as on the odder!"

Time Didn't Matter. A prominent lawyer tells this tale of the hills of Kentucky: He had been in Jackson county during the hearing of a big land case, and after the strain of several weeks in the courtroom decided to take a trip up in the mountains and enjoy the quieting influence of the hills. He traveled the paths and narrow mountain roads till he found himself, at the end of several day's journey, about forty or fifty miles from the railroad. It was about noon, the lawyer judged, for his watch had run down, and he could not be exact. But in the midst of this deep contemplation the lawyer came upon an old darkey sitting upon a boulder alongside the road.

"What time have you?" he asked of the old darkey.

"Well, suh, boss, the old Waterberry says she's about ten minutes to 12," was the reply.

"Is that sun time or railroad time?" again questioned the lawyer.

"What diffunce does that make? One am about as fer from here as the other."—Louisville Times.

Ultimatum Sent. A young man who last June received his diploma has been looking around successively for a position, for employment, and for a job. Entering an office, he asked to see the manager, and while waiting he said to the office boy:

"Do you suppose there is any opening here for a college graduate?"

"Well, dere will be," was the reply, "if de boss don't raise me salary to t'ree dollars a week by termorrer night."—Christian Register.

7 DAYS

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